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**The Use Of Gender In The Trials Of**  
**Myra Hindley And Rose West**

**By Josephine Louise Winter**

**A Dissertation submitted to the University of Bristol in accordance  
with the requirements of the degree of PhD in the faculty of law.**

**Word Count 97,639**

## **AUTHOR'S DECLARATION**

**I declare that the work in this dissertation was carried out in accordance with the Regulations of the University of Bristol. The work is original except where indicated by special reference in the text and no part of the dissertation has been submitted for any other degree.**

**Any views expressed in the dissertation are those of the author and in no way represent those of the University of Bristol.**

**The Dissertation has not been presented to any other University for examination either in the United Kingdom or overseas.**

**Signed**

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned to the right of the 'Signed' label.

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18/02/02

## Abstract

This work examines the transcripts of the trials of Myra Hindley (1966) and Rosemary West (1995). It adopts a feminist perspective to expose the constructions of femininity that were manifest in the cases posed by the prosecution and defence and the judges' summings up. Consequently, it draws primarily upon two theoretical bases: first, the now abundant feminist criminological literature and, second, work on the criminal court process; for example, evidence theory and work on case construction, and the functions and roles of the judge and jury, most of which has not as yet addressed issues of gender.

Examination of the trials reveals that many of the characteristics associated with femininity identified by previous feminist work were pervasive during both trials. However, whilst the nature of constructions of femininity deployed are the same in spite of the thirty years that passed between the trials, their usage is not. Whilst it might be expected that the progression of feminist work would have reduced the strength of the presence of gendered norms in the courtroom, the author will show that counsel's use and reliance on gendered stereotypes is *greater and more sophisticated* in Rosemary West's case than in that of Myra Hindley.

The difference between the use of gendered stereotypes in the two cases is a consequence of the means by which they appear. Constructions of femininity in Rosemary West's case formed part of the case, they constituted themes in the narrative created and presented by counsel. Whilst similar norms were present in Myra Hindley's trial, they were less frequently explicitly utilised by counsel. The author suggests that the reasons for the difference are twofold. First, that the stronger and more prolific evidence in Myra Hindley's trial meant that prosecution counsel relied less on gender stereotyping to make a convincing case, whereas the evidentiary gap in Rosemary West's trial was filled with evidence and suggestions pertaining to her failure to fit stereotypes of femininity. Secondly, feminist literature, knowledge and findings were absorbed and internalised by the legal profession by the 1990s, providing counsel with knowledge on how best to fill the evidentiary gap.



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## Chapter One

### **Introduction**

This thesis is an exploration of the use of gender constructs in criminal trials. It does this through the use of two exceptional case studies – the trials of the female serial murderers Myra Hindley and Rose West.

In 1966 Myra Hindley and Ian Brady were jointly tried for the murders of John Kilbride (aged 12), Lesley Ann Downey (aged 10), and Edward Evans (aged 17). Myra Hindley was convicted of the murders of Lesley Ann Downey and Edward Evans and of being an accessory after the fact in the murder of John Kilbride. Ian Brady was found guilty of murder on all three counts.

In 1995 Rosemary West was tried for the murders of ten young women / girls. She was due to be tried jointly with Fred West, who was charged with twelve murders,<sup>1</sup> but he committed suicide whilst on remand. Rose West was found guilty on all ten counts.

Before investigating these cases further it is necessary to understand the term ‘serial murder’. What is serial murder and what distinguishes murder (unlawful killing with malice aforethought), from serial murder? Definitions of serial murder have placed the ‘required’ number of victims at between three and four. But again serial murder needs to be distinguished from other types of multiple murder, such as spree killing or mass murder. Thus, an additional definitional element is the requirement of a period of ‘cooling off’ between killings. Perhaps two of the most useful and concise definitions are these:

... the premeditated murder of three or more victims committed over time, in separate incidents, in a civilian context, with the murder activity being chosen by the offender.<sup>2</sup>

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<sup>1</sup> Two having been committed before he met Rose, see below No 36.



... (serial murder) involves three or more victims, killed over a period of time of more than thirty days, with a significant cooling off period between killings.<sup>3</sup>

The number of serial killers active at any one time is a matter of pure guesswork as their killings may appear unconnected and the killers are difficult to apprehend. This is perhaps because other common characteristics of their crimes are that the killers often have no prior relationship with their victims and that the crimes seem 'motiveless' as, for example, there is usually no material gain as a consequence of the murder.<sup>4</sup> Estimates that have tried to calculate the number of active serial killers in the USA have varied from between 350<sup>5</sup> and 35.<sup>6</sup> There is no such estimate available for the UK.

### **Women and Serial Murder**

The popular media seems fascinated by serial murderers, both male and female. The crimes, lives and personalities of the killers are morbidly dissected in all sections of the media (albeit in different ways and to different degrees).<sup>7</sup> There are, however, few known examples of female serial killers. In the UK, three of the best known are Myra Hindley, Rose West and Beverly Allitt. It is perhaps, at least in part, because of their rarity that the women who do commit these crimes accrue a notoriety surpassing that of male serial killers. However, this alone is not an adequate explanation for the apparent simultaneous fascination and revulsion expressed in response to these women. The answer may lie not merely in the wider phenomenon of fascination with serial murder, but also in the very fact that they are women.

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<sup>2</sup> This is the Federal Board of Investigation's definition. BT Keeney and KM Heide 'Gender differences in serial murders' *Journal of interpersonal violence*, Sept 1994, 383.

<sup>3</sup> C Coleman and C Norris 'Thinking Seriously about Serial Killers' in 'Introducing Criminology' Cullompton, Willan Publishing (2000) p89.

<sup>4</sup> C Coleman and C Norris 'Thinking Seriously about Serial Killers' in 'Introducing Criminology' Cullompton, Willan Publishing (2000) .

<sup>5</sup> R Holmes and J De Burger 'Serial Murder' Newbury Park, CA Sage (1988).

<sup>6</sup> J Levin and J Fox 'Mass Murder: America's growing menace' New York, Plenum Press(1985).

<sup>7</sup> The representations of Myra Hindley by the press have been examined by M Nellis in 'Myra Hindley The Hated Icon' *The Abolitionist* No 20, (1985, No 2) p9.



Skrapec<sup>8</sup> argues that little is known about female serial killers by virtue of their apparent rarity. She says that, for this reason, they are generally treated as aberrations and, thus, examined as individuals. In order to distance herself from this approach, she examines a number of different female serial murders and seeks to gain an understanding of the elusive larger picture. She argues that female serial murder is not a modern phenomenon, but has existed over centuries and that the women's motives have remained constant: 'a need for power'<sup>9</sup>. She identifies a number of different cases and argues that female serial killing is not as uncommon as we may think. However, the examples she draws on are cases from as far back as 1600, and the locations vary, for example, from Hungary, France, the USA and the UK. Her argument, therefore, that all that varies from case to case is the *modus operandi* and that the motive remains constant, is surely weakened by the nature of her sample which draws from different times, places and cultures.

Contrary to this argument, Cameron and Fraser<sup>10</sup> argue that implicit in UK society's understanding of serial killing is its sexual nature. They argue that this definition of 'sexual' is wider than murder carried out in conjunction with rape or sexual assault. They define sexual murder in terms of the 'eroticisation' of murder.<sup>11</sup> They argue that this type of killing can be traced back little more than a hundred years, and that to classify crimes taking place before this time as serial murder is to attribute them with false meaning.<sup>12</sup> For example, Skrapec sexualises the murders committed by the Hungarian Countess Elisabeth Bathry,<sup>13</sup> noting that when she was apprehended for her crimes she was 'discovered immersed a melee of lesbian sex'<sup>14</sup> and thereby suggests that there was a connection between this and her murders. However, the Countess's crimes<sup>15</sup> were committed in the course of witchcraft; she bathed in the blood of her victims in order to retain her youthful appearance, and the murders are therefore unlikely to have been sexually motivated. Thus, contrary to this 'reconstitution' of

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<sup>8</sup> C Skrapec 'The Female Serial Killer: an evolving criminality' in H Birch (Ed) 'Moving Targets: women murder and representation' University of California Press, Berkley, Los Angeles (1994).

<sup>9</sup> Ibid p244.

<sup>10</sup> D Cameron and Fraser 'The Lust to Kill: a feminist investigation into sexual murder' Cambridge, Polity in association with Basil Blackwell (1987).

<sup>11</sup> Ibid '... a sexual desire that finds its outlet in murder', p1.

<sup>12</sup> Ibid p19

<sup>13</sup> Died 1614.

<sup>14</sup> C Skrapec 'The Female Serial Killer: an evolving criminality' in H Birch (Ed) 'Moving Targets: women murder and representation' University of California Press, Berkley, Los Angeles (1994) p247.

<sup>15</sup> Over 600 murders.



events in line with modern knowledge and understanding, serial murder should be regarded and treated as a modern phenomenon. Consequently, to begin to understand serial murders it is necessary to look to the culture, time and place in which they are committed.

If Cameron and Fraser's theoretical approach to understanding serial murder is adopted it is difficult to identify a 'larger picture', particularly in relation to female serial killers, who are extremely rare. Perhaps, therefore, the best opportunity for this type of research is provided by the USA, because of the relatively large number of cases there. American research has found that women's involvement in serial murder, as compared to men's, is approximately proportionate to their involvement in other types of murder.<sup>16</sup> In the USA women are responsible for 12-15% of murders and the same is true of (known) serial murder: for every 100 serial murders, between 12 and 13 are carried out by women.<sup>17</sup> Thus, as a consequence of both the large population and high homicide rate,<sup>18</sup> there is a larger pool of cases to study.

Keeney and Heide<sup>19</sup> identify a number of women who had killed more than three victims in the USA. Notably, in relation to the present research, women who killed in partnership with a man were excluded from the study. The research found that the nature of women's serial killing mirrors 'ordinary' murder in that women tend to kill people they know, usually in a domestic or caring situation. This type of modus operandi is known as 'comfort zone' killing; where the murderer kills in a way or in a place that does not arouse discomfort for him or her. The comfort zone can be a place or a psychological environment in which the killer is literally 'comfortable'. Women consequently choose 'domestic' environments and weapons and do not, therefore, tend to commit crimes of sexual violence and aggression or use guns, both these activities being 'traditionally male'.<sup>20</sup>

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<sup>16</sup> BT Keeney and KM Heide 'Gender Differences in Serial Murders' Journal of interpersonal violence, Sept 1994, 383.

<sup>17</sup> C Skrapec 'The Female Serial Killer: an evolving criminality' in H Birch (Ed) 'Moving Targets: women murder and representation' University of California Press, Berkley, Los Angeles (1994) p243.

<sup>18</sup> Particularly in relation to serial murders, see Supra No 5 and 6.

<sup>19</sup> BT Keeney and KM Heide 'Gender differences in serial murders' Journal of interpersonal violence, Sept 1994, 383.

<sup>20</sup> C Skrapec 'The Female Serial Killer: an evolving criminality' in H Birch (Ed) 'Moving Targets: women murder and representation' University of California Press, Berkley, Los Angeles (1994) p257



These findings contrast with what we know of the UK in several ways. Firstly, as noted above, the authors of the American research were able to identify a number of women who had killed alone, and these women made up their sample. If the same rule is applied to the UK cases we have just one comparable case in the last one hundred years, that of Beverly Allitt. Lone female serial killing in the UK appears to be extremely rare. Allitt's case does, however, fit the pattern of 'domestic' type killing committed whilst in a caring role.

The cases of Myra Hindley and Rose West differ from the American cases discussed by Keeney and Heide both because they killed in partnership with men, and because the motivation for, or the circumstances surrounding, the murders was sexual. Sexual serial killing has, apart from in these two cases, been carried out solely by men.<sup>21</sup> This may be in part because of the 'comfort zone' theory, which suggests that socially prescribed behaviour will determine the way in which murderers commit their crimes. Thus, women being socially constructed as domestic and sexually passive,<sup>22</sup> do not commit sexual, predatory murders. However, the unquestioning application and acceptance of this theory fails to deal adequately with the roots of sexual serial killing or the reasons why it is carried out by men; that is, why sexual, predatory behaviour is part of their comfort zone. In summary, the research of the type carried out by Keeney and Heide describes patterns of killing, but does not ask why killing is characterised in the way it is.

By dealing with 'serial killing' as a homogenous category (transcending all times and spaces), as in Skrapec's work, the special significance attached to *sexual* serial murder is lost or neglected. The fact is that Peter Sutcliffe (the Yorkshire Ripper), Denis Nilsen, Ian Brady and Fred West carried out a series of sexually motivated killings. All, with the exception of Denis Nilsen, sexually abused and mutilated women and girls. Consequently, explanations such as the comfort-zone theory fail to *explain* or *understand* why these men killed in the way they did. To do this demands that recent, sexually motivated crimes be looked at independently from those that took place in other times, cultures and spaces. To begin to understand or explain them requires an

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<sup>21</sup> D Cameron and Fraser *'The Lust to Kill: feminist investigation into sexual murder'* Cambridge, Polity in association with Basil Blackwell (1987) p23.

<sup>22</sup> See Ch 2.



understanding of the contemporary social construction of sexuality. Thus, one explanation for this type of killing is the misogynistic society in which the male perpetrators are located and the specific type of ‘masculinity’ that gives rise to this type of killing.<sup>23</sup> Masculinity in contemporary society is constructed in terms of aggression, strength and power.<sup>24</sup> This construction is implicit in the construction of male sexuality and so images of male sexual violence are profuse in society. Perhaps the most concrete and well-known examples of this are the works of De Sade. However, images of men’s sexual dominance and women’s passivity are not only embodied in these extreme works, they are fundamental to our very understanding of male and female sexuality.<sup>25</sup> It could be argued that sexual serial murders are a manifestation of these constructions. Thus, Caputi describes the act of male sexual murder as ‘phallic terrorism’. This describes the systematic raping, crippling and killing of women by men as an expression of their dominance.<sup>26</sup>

Killing by women is characterised very differently; women predominantly kill their own children.<sup>27</sup> This in itself may come as a surprise to many as it jars so startlingly with the common perception and construction of women as maternal.<sup>28</sup> Yet these women are not perceived or treated as murderers. They are likely to be charged with manslaughter on the basis of diminished responsibility or under the Infanticide Act 1938.<sup>29</sup> Thus, women who kill their children are perceived and treated as being ‘sick’ and possibly as generally harmless,<sup>30</sup> whereas men who kill children will be perceived as murderers and, therefore, as thoroughly ‘wicked’.<sup>31</sup> This response to women who

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<sup>23</sup> D Cameron and Fraser *‘The Lust to Kill: a feminist investigation into sexual murder’* Cambridge, Polity in association with Basil Blackwell (1987).

<sup>24</sup> See R Thurston and J Beynon *‘Men’s Own Stories, lives and violence: research as practise’* In Dobash, Dobash and Noaks *‘Gender and Crime’* University of Wales Press (1995) p182, S Box *‘Power, Crime and Mystification’* Tavistock, London (1983), p145, L Bibbings *‘Boys Will Be Boys: masculinity and offences against the person’* p234 in D Nicolson and L Bibbings *‘Feminist Perspectives in Criminal Law’*, London, Cavendish (2000), R Collier *‘Masculinities, Crime and Criminology’* Sage, London (1998) p74, RW Connell *‘Masculinities’* Cambridge, Polity Press (1995), Ch 1.

<sup>25</sup> C Smart *‘Women, Crime and Criminology’* Routledge and Kegan Paul: London (1977) pp95, C Smart *‘Law’s Power the Sexed Body and Feminist Discourse’* (1990) 17, *Journal of Law and Society*, 194 and M McIntosh *‘Who needs prostitutes? The ideology of male sexual needs’* in C Smart (Ed) *‘Women Sexuality and Social Control’* London, Routledge and Kegan Paul (1978).

<sup>26</sup> J Caputi *‘The Age of Sex Crime’* The Women’s Press (1988), p3.

<sup>27</sup> Cameron and Fraser *‘The Lust to Kill: a feminist investigation into sexual murder’* Cambridge, Polity in association with Basil Blackwell (1987), p9.

<sup>28</sup> See Ch 2.

<sup>29</sup> A Wilczynski and A Morris *‘Parents Who Kill their Children’* *Crim LR* (1993) 31.

<sup>30</sup> H Allen *‘Rendering them Harmless’* in P Carlen and A Worrall *‘Gender Crime and Justice’* Oxford, OUP (1987).

<sup>31</sup> A Wilczynski and A Morris *‘Parents Who Kill their Children’* *Crim LR* (1993) 31.



commit filicide is grounded in the perception of them as maternal and passive, and maintains that construction in the face of the challenge to it presented by their acts. Women who kill men are subject to similar treatment. These women are also likely to be rendered harmless by the response they receive.<sup>32</sup> For example, the few women who kill their male partners frequently do so having suffered years of abuse and regard themselves as having acted in self-defence. Yet their most promising defence is diminished responsibility,<sup>33</sup> which again constructs them as sick. The actions of women who commit these crimes can be in no way interpreted as sexually motivated. On the rare occasions that women's violence could be open to sexual interpretation their motives are regarded as vengeful and may even become the subject of jokes, for example, in the infamous Bobbit case.<sup>34</sup>

Thus, women, in the type of crimes they commit, and society's interpretation of those crimes, are generally non-sexual and non-aggressive. In contrast serial killing is a male crime, characterised by violence and sexual aggression directed at women. So the murders committed by Rose West and Myra Hindley, at first glance, do not fit the category of feminine killing, as their crimes are crimes of the type committed by male sexual serial murderers and they are committed against the young.

### **The Cases of Myra Hindley and Rose West**

The atypical nature of the crimes committed by Rose West and Myra Hindley may, therefore, go some way to explaining society's endless fascination and revulsion with them. They have committed crimes rarely, if ever, committed by women: a series of child sex murders.<sup>35</sup> The two women committed their crimes in partnership with men, most likely as accomplices, yet their acts cannot be reconciled with traditional notions of femininity, not least because their fierce denial at the time of trial meant they could

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<sup>32</sup> 'Rendering them harmless' is a phrase coined by H Allen in '*Rendering them Harmless*' in P Carlen and A Worrall '*Gender Crime and Justice*' Oxford, OUP (1987).

<sup>33</sup> See The Homicide Act 1957 s2. In relation to women who kill see Thornton (1992) 1 All ER 306.

<sup>34</sup> In this case an abused wife severed her husband's penis. See P J Priest, C Jenefsky and J D Swenson: 'Phallogocentric Slicing: 20/20s reporting of Lorena and John Bobbitt' p101-112, in Myers and Wright (Eds) '*No Angels: women who commit violence*' London: Pandora (1996)

<sup>35</sup> Although it should be noted that in the 1960s the concept of 'serial killer' did not exist and so Myra Hindley was simply labelled 'sex-killer'. According to Cameron, the label serial sex killer has been retrospectively applied: 'Wanted: The Female Serial Killer' Trouble and Strife, 33, Summer 1996, 21



not draw on 'feminine defences' such as subordination<sup>36</sup> to excuse or explain their crimes. In both cases it is extremely unlikely that these women would have sexually murdered without having met their partners. Rose West was only fifteen when she met Fred West who had already killed twice.<sup>37</sup> Myra Hindley appeared to be a 'normal' young woman before she met Ian Brady, existing in a way fitting contemporary notions of femininity. Ian Brady, however, was already exhibiting disturbed and violent behaviour.<sup>38</sup> Yet today it is the women and not the men who are most reviled, as indicated by the following:

She (Rose West) was the mistress, he the slave. He kidnapped for her, presented her with victims like a dog carrying a partridge to its masters feet ... without Rose it is unlikely that he would have been anything more than a would-be Casanova with Jekyll and Hyde tendencies.<sup>39</sup>

This unfortunately typical yet highly inaccurate<sup>40</sup> 're-construction' of the facts is the type of portrayal that dominates popular discourse in relation to both cases. This is perhaps because their male partners have been 'excused'; Ian Brady by 'going mad',<sup>41</sup> and Fred West by committing suicide.

Many accounts have been written of the crimes committed by the two women. However, the vast majority have been in the form of 'true crime' novels. Academic and feminist writers have shied away from the cases until recently, perhaps because 'there is no easy way to appropriate ... (their) ...actions for the cause of women'.<sup>42</sup>

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<sup>36</sup> By feminine defences I mean legal defences, such as diminished responsibility, and 'non-legal' defences such as passivity and subordination which would have mitigated their behaviour to some extent, see Ch 2.

<sup>37</sup> Prior to meeting Rose West (15 years old) in 1967, Fred West (28 years old) had certainly killed twice before (his wife Rena West and Nanny Anne McFall). It is highly likely that he had also killed Mary Bastholm who disappeared on 6<sup>th</sup> Jan 1967.

<sup>38</sup> For a description of their lives before they met see E Williams *'Beyond Belief'* London, Pan Books Ltd (1968).

<sup>39</sup> Colin Wilson writing in *Daily Mail* 23<sup>rd</sup> Nov (1995) p37.

<sup>40</sup> Supra No 36.

<sup>41</sup> Anne West the mother of Lesley Ann Downey was famously quoted as having said 'at least he has had the decency to go mad' after Ian Brady was committed to Broadmoor. For a discussion of this see H Birch *'If Looks Could Kill: Myra Hindley and the iconography of evil'* in H Birch (Ed) *'Moving Targets: women murder and representation'* University of California Press, Berkley, Los Angeles (1994), p55.

<sup>42</sup> H Birch *'If Looks Could Kill: Myra Hindley and the iconography of evil'* in H Birch (Ed) *'Moving Targets: women murder and representation'* University of California Press, Berkley, Los Angeles (1994), p34.



Perhaps more fundamentally, their crimes can be used to halt the progression of feminism. Cameron argues that the two women and their crimes fuel arguments that blame feminism for the rise in female crime, in particular violent crime.<sup>43</sup>

Recently, however, writers such as Deborah Cameron, and Helen Birch have tried to gain an understanding of the crimes committed by the two women and society's fierce response to them. They have dismantled the discourses that have been used to talk about these women and other women who kill. Their investigation reveals that the women have been consistently perceived as unnatural deviations. Whilst their male partners' actions were criminal, the men are not popularly perceived to have breached sacred notions of gender.

The violent and sexual nature of their crimes distinguishes Myra Hindley and Rose West from women whose behaviour can be and is mitigated, for example, women who kill their children or violent partners, as discussed above. Consequently, in direct opposition to these types of cases, their gender is used *against* them and they are judged as women.

The woman who kills is exactly what she is supposed not to be. Her act is deemed not only unnatural but impossible in a real woman; so she is unwomaned by her violence and seen as the classic aberration, exiled from her community and her gender.<sup>44</sup>

And, in particular, they are judged as mothers:

If her (Rose West's) wickedness was understood primarily in terms of her failings as a mother (and not simply her failings as a human being) then the killing of her own children, particularly Heather who was biologically hers, had to be made to rank above every other wicked act.<sup>45</sup>

Or they are judged as 'potential' mothers:

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<sup>43</sup> D Cameron 'Wanted: the female serial killer' *Trouble and Strife*, 33, Summer 1996, 21.

<sup>44</sup> B Campbell '*Forward*' in A Jones '*Women Who Kill*' Gollancz, London (1991) pxi.

<sup>45</sup> D Cameron 'Wanted: the female serial killer' *Trouble and Strife*, 33, Summer 1996, p27.



She (Myra Hindley) was treated as a 'crypto-mother' because of the unquestioned cultural tendency to conflate femininity and maternity.<sup>46</sup>

Consequently both Myra Hindley and Rose West have been perceived and constructed as 'bad', rather than 'mad'.<sup>47</sup>

The alternative response is to argue that both women were the dupes of their male partners.<sup>48</sup> This explanation has been less well received generally and eclipsed by the portrayals of their dominance and deviance. This is perhaps because of the popular appeal of these latter discourses (as evident in the tabloid press). Furthermore, the deviancy portrayal allows both women to be treated as aberrations and, thus, their actions do not disrupt prevailing understandings of femininity. Whilst the reality of what happened is more likely to be closer to the 'dupe' explanation rather than the 'female dominance' model, this too is problematic. The 'dupe' narrative seeks to excuse the women's actions, locating explanations within the notion of female passivity and thus removing their agency. This represents a perpetuation of the construction of female passivity.

Thus, feminist theorists seem to be caught in a double bind. How can we discuss the crimes without falling into the trap of existing, prevailing constructions of femininity? The only available approach seems to be to engage in a discussion of the crimes that unpacks the dominant discourses, creating space for new ways of viewing and analysing the cases.<sup>49</sup> Whilst this work has begun in relation to the aftermath of the trials (for example, the media and other reporting of the trials and subsequent events) little or no work has been conducted on the trials themselves. Consequently, this is the point at which this thesis departs from existing work on Myra Hindley and Rose West.

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<sup>46</sup> D Cameron 'Wanted: the female serial killer' *Trouble and Strife*, 33, Summer 1996, p25.

<sup>47</sup> For a discussion of these two categories and how women are constructed by the criminal justice process to 'fit' one or the other see D Nicolson 'Telling Tales: Gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2, 185.

<sup>48</sup> These discourses are analysed in D Cameron 'Wanted: the female serial killer' *Trouble and Strife*, 33, Summer 1996, 21. H Birch '*If Looks Could Kill: Myra Hindley and the iconography of evil*' in H Birch (Ed) '*Moving Targets: women murder and representation*' University of California Press, Berkley, Los Angeles (1994), S French '*Partners in Crime: defending the female species*' in Myers and Wright (Eds) '*No Angels: women who commit violence*' London: Pandora (1996). Also see Bell and Fox 'Telling Stories of Women who Kill' *Social and Legal Studies* (1996) 471.

<sup>49</sup> An approach which is suggested by S Duncan in 'Law as Literature: deconstructing the legal text' *Law and Critique* Vol 5, No 1 (1994), 3.



## Outline of the Thesis

Existing work such as that cited above has tried to identify and understand the strands of discourse that constitute society's interpretation and understanding of the crimes. This thesis examines the transcripts of the prosecution and defence cases and the judges' summings up of both trials to gain an understanding of how 'the court' treated and perceived the women. The binary constructions of Myra Hindley and Rose West as either unnatural deviations or passive dupes, as identified above, are evident in the trials. The prosecution in both cases drew on various characteristics associated with femininity to illustrate their deviance. The defence argued that they were innocent, that they knew nothing about what their partners were doing, again drawing on 'feminine' characteristics, such as passivity. However, just as the perception of the crimes at the times of the trials varied due to the very different social contexts of the 1960s and 1990s,<sup>50</sup> so did the cases constructed by counsel. This thesis investigates the use of femininity in the cases constructed by counsel and offers some speculative comments on why the trials differed.

Chapter two reviews existing feminist work on the construction of femininity in the law. It then goes on to examine literature on women, crime and criminology, identifying patterns that have emerged in relation to women's treatment in the criminal justice system. Chapter three then examines work that has sought to identify and understand the process of case construction and the internal workings and processes of the courtroom. These two chapters form the theoretical base for the thesis, which investigates the role of femininity in the criminal trials of Rose West and Myra Hindley.

The substantive chapters of the thesis are chapters four, five and six. Chapters four and five investigate the role of femininity in the cases constructed by the prosecution and defence in first, the trial of Myra Hindley and subsequently, the trial of Rose West. Chapter six provides an examination of the judges' summings up in the two cases and

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<sup>50</sup> E Wilson *'Only Halfway to Paradise: women in postwar Britain 1945-1968'* London, Tavistock (1980).

how the cases that were presented to the court, particularly in terms of the gendered constructions that were employed, were interpreted by the judges. Finally, in chapter seven, the trials are drawn together in a conclusion.



## Chapter 2

### **Feminism, Crime and Criminology**

A considerable body of work now exists which seeks to understand the processes at work during criminal trials.<sup>1</sup> Much of this work has involved examination of the cases presented in trials, and of the way in which the defendants and witnesses are portrayed during them.<sup>2</sup> As noted in chapter one, the cases of Rose West and Myra Hindley have recently attracted particular attention as a consequence of the apparently unique nature of their crimes. However, their trials have not yet been the subject of in-depth feminist analysis. The present study will examine the presentation of the cases at trial from a feminist perspective, not because this perspective is the only approach that can shed light on the two trials, but because a feminist perspective can provide important insights into them as trials of two unique *women*. The special importance of the trials to feminism will be confirmed as an examination of the transcripts will reveal that discourses of femininity were pervasive during them. Thus, it could be said that taking such a perspective is demanded by the nature of the discoveries made by previous feminist work, which has paid particular attention to the constructed woman, and which has highlighted links between constructions of femininity and perceptions of criminality.

#### **What is Feminism?**

Many perspectives have been identified within the descriptive denomination 'feminism' and it is no longer sufficient to merely state that an approach is 'feminist'. 'Feminism' in its broadest sense remains useful however as descriptive of a set of concerns, a perspective or approach, or as encapsulating the aims of that approach. Feminists could

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<sup>1</sup> For an early example see the work of Jerome Frank *'Law and the Modern Mind'* New York, Stevens (1949), see also Ch 2 'The Phenomenon of the Courtroom Trial: truth and case construction'.

<sup>2</sup> For example, see H Arendt *'Eichmann in Jerusalem: a report on the banality of evil'* New York and London, Penguin Books (1994) and L Kennedy *'The Trial of Stephen Ward'* Victor Gollanz Ltd, London (1964).



be described, however, as sharing two core convictions. First, that society is patriarchal; that 'public discourse has been almost exclusively conducted by men from ... the perspective of men.'<sup>3</sup> Second, that patriarchy is not good for women and, therefore, that society requires change to incorporate the perspectives and needs of women. All feminists, in this, the broadest understanding of the term, share the belief that

... women suffer discrimination because of their sex, that they have specific needs which remain negated and unsatisfied and that the satisfaction of these needs would require radical change in the social, economic and political order.<sup>4</sup>

Such an exposition of feminism does not, however, account for the diversity of interests held by women nor the diversity of changes required to address their needs. Forms of feminist action and theory have been shaped into streams that address those perceived needs and the ideological outlook of particular feminists; for example marxist, liberal and radical. Alternatively, feminism can be viewed historically<sup>5</sup> as forming three 'waves' that directly correspond with the perceived cause of the problem of inequality. The waves illustrate the way in which feminist thought has developed, each new wave identifying and addressing the supposed shortcomings of the previous one.

The first wave feminists strove to fit women into existing masculine models and concentrated on law as a medium for change. They denied women's incapacity for public life and stressed their equal ability to reason, thus disputing their intellectual difference.<sup>6</sup> However, this approach failed to acknowledge the complexity of law's<sup>7</sup> function in oppression; law recreates, formalises and strengthens unequal relations yet,

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<sup>3</sup> P Smith '*Feminist Jurisprudence*' Oxford, Oxford University Press (1993) p.3.

<sup>4</sup> R Delmer '*What is Feminism?*' In J Mitchell & Oakley (Eds) '*What is Feminism?*' Oxford, Blackwell's Book Services (1986) p.8.

<sup>5</sup> It should be noted that an alternative, jurisprudential understanding of feminism may differ from a historical analytical approach. The study of law from a feminist perspective has not followed the same pattern as the three distinct waves. The progression of feminist jurisprudence has been slower, commencing in the late 1960s from a socialist perspective. It has advanced however, and most recently adopts a third wave perspective of analysis.

<sup>6</sup> Initially women's different treatment was justified with reference to 'natural' male dominance and women's incapacity for public life, their nature lacking the essential characteristics, including loftiness of mind and ability to indulge in abstract thought. N Naffine '*Law and the Sexes*' Sydney, Allen and Unwin (1990) Ch. 2.

<sup>7</sup> 'Law' for the purposes of this chapter refers to written law (statute and caselaw), and law in all its various forms; the courtroom and its various personnel.



at the same time, it is a product of patriarchal (social) relations. Second wave feminists acknowledged the inhibiting effect of women's different lives (childbirth and care) and fought for laws addressing their difference. They identified that the very nature of law embodies maleness; its combative nature, its embodiment of male values such as ownership and its male dominated institutions and personnel.

Both the first and second wave approaches limited reformers to two paths: either women should strive for equality on men's terms and become 'like a man' (first wave feminism). Or, alternatively, women should be treated differently from men and special account should be taken by law of their different biological and social natures; thus recognising their disadvantages in patriarchal society, yet at the same time reproducing constructed differences (second wave). The consequence of these two sets of approach, both of which are evident in law today, is complexity and contradiction. In one breath law demands its agents to discount gender<sup>8</sup> yet almost simultaneously it creates tests and laws that assume, amplify and account for gender differences.<sup>9</sup> Both approaches fail to address the validity of the unstated male norm against which they compare woman.<sup>10</sup> Most importantly for the purposes of this work, neither challenges the model of woman which is presented, either as intrinsically different or as able to 'fit' the male model of law. In doing so both fail challenge the power of law to define and neither contests the status quo.<sup>11</sup> Consequently, a stream of feminism has evolved whose method is to challenge the very image of women that is presented, both by law and other discourses.

This third wave perspective stems from the wider postmodernist tradition which denies the validity of the assumptions that underpin our understanding of the world. This approach questions these assumptions arguing that they are based on 'constructs'; that they are of society's creation. Integral in the construction of reality is the ordering of

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<sup>8</sup> E.g. the Sex Discrimination Act 1975.

<sup>9</sup> E.g. the reasonable man test : Camplin (1978) AC 705. E.g. in the cases of Corbett v Corbett, (1971) 83, Rees v UK (1986) 9, EHRR 56 and Cossey v UK (1990) 13 ECHR 622 UK law refused to disassociate sex and gender, tying appropriate, and expected, gendered behaviour to sex thus highlighting its expectation that particular behaviour will follow sex assignment.

<sup>10</sup> By acknowledging that law is both a product and a producer of gender relations third wave feminism recognises that it will systematically reproduce unequal relations in spite of reforms on feminist lines. See : J Brophy and C Smart *'Women In Law : explorations in law, family and sexuality'* London, Routledge and Kegan Paul (1985).

<sup>11</sup> P Smith *'Feminist Jurisprudence'* Oxford, Oxford University Press (1993) p.230.



phenomena as binaries, one side of the binary being valued over the other eg male/female. Postmodernism seeks to disrupt these binary classifications exposing them and the constructed nature of the concepts they embody and giving voice to the undervalued 'other'.<sup>12</sup>

Crucial to an understanding of the task of postmodernism, and indeed the task of this thesis which adopts a postmodern feminist position, is an appreciation of the work of Foucault.<sup>13</sup> Foucault first questioned the nature of the identity of subjects (people/individuals). He postulated that concepts such as 'human nature' are 'abstractions' (they are constructs) and wanted to understand how such abstractions came about. Subjects (identities) he argued are based on these abstractions. The process of defining the subject is circular. Knowledge gathered helps to define the 'normal' subject.<sup>14</sup> These norms of behaviour and identity then feed back into the construction of subjectivity through discourse, which circulates notions of subjectivity through society.<sup>15</sup> Law has been identified as playing an important role in this process. Legal discourse, like other discourses, transmits these norms and law's power and authority mean that the circulated norms are seen to be the 'truth'.<sup>16</sup> The norms are embodied in both what law sanctions and what it prohibits. But law goes further; it has a disciplinary function. Law judges people according to their conformity with norms. It identifies and isolates anomalies that challenge those norms and corrects deviance through punishment.<sup>17</sup>

Postmodern feminist jurisprudence draws upon this theoretical base, contending that 'women's nature', femininity, is a construct or norm, and that those who deviate from

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<sup>12</sup> Examples of work conducted in this tradition are M Barrett *'Politics of Truth: from Marx to Foucault'* Basil Blackwell, Oxford (1991), S Gunew *'Feminist Knowledge: critique and construct'* Routledge, London (1990), G Rose *'Dialectic of Nihilism: post-structuralism and law'* Blackwell, Oxford (1984).

<sup>13</sup> Eg M Foucault *'The Archaeology of Knowledge'* Translated from French by A Sheridan Smith, London Tavistock (1972), M Foucault *'Discipline and Punish: the birth of the prison'* Translated from French by A Sheridan' London, Penguin Books (1979).

<sup>14</sup> One such mechanism identified by Foucault is biopower (information about the body eg birth, mortality, propagation etc) See *'The History of Sexuality: Vol 1, an introduction'* Allen Lane, London (1979) pp138-41.

<sup>15</sup> For a general overview see S Watson *'Foucault and the Study of Social Policy'* in G Lewis, S Gewirtz and J Clarke *'Re-thinking Social Policy'* Sage Publications, London (2000).

<sup>16</sup> J Wallbank 'An Unlikely Match? Foucault and the lone mother' *Law and Critique*, Vol 9, No 1, (1998), p59, see generally M Foucault *'The Archaeology of Knowledge'* Translated from French by A Sheridan Smith, London Tavistock (1972), Ch 4.

<sup>17</sup> M Foucault *'Discipline and Punish: the birth of the prison'* Translated from French by A Sheridan, London, Penguin Books (1979).



that norm are subject to punishment or discipline.<sup>18</sup> Such feminist work identifies the legal subject as a male subject and contends that women are defined in opposition to that subject, rendering them 'the other'. The constructions of the female and femininity place women second in the binary hierarchy and attributes to them secondary characteristics and value.<sup>19</sup> All that is defined as female, as the devalued 'other', is, thus, both silenced by its secondary status and oppressed. As a discourse law too maintains binary ordering, for example, law fails to hear or devalues arguments framed in terms of emotional loss.<sup>20</sup> Thus, legal feminism breaks women's silence giving them a space to speak so that women become active in the constitution of the subject.<sup>21</sup> In doing so it exposes and challenges the norm of femininity. It seeks to reveal both femininity's constructed nature and the process of its construction by discourse. In order to reveal the constructed nature of femininity, postmodern feminism deconstructs the images portrayed by law and other discourses and challenges both their power to define and their claims to truth. It is through, for example, questioning law's assumptions about the naturalness of gender and indeed sex, and the nature of man and woman, that the way in which those assumptions reverberate through legal institutions, language, statutes and judgements has been exposed.

### **The Construction of Subjectivity**

Postmodern feminism argues that law, like other discourses, assumes the existence of two categories of person, a male and a female, the content of which will be explored below. It is the assumed exclusive existence and content of this dualism that allows law and other discourses to treat men as the norm and women as 'the other'. Those who fall outside the categories of femininity or masculinity are regarded as deviant,<sup>22</sup> so that, for example, 'femininity' is itself broken into a dualism (good and bad femininity). Models of female conformity and non-conformity that are constructed by the law are crucial in

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<sup>18</sup> Discipline may come in many forms, not merely legal sanctions, but through, for example, re-education. See Donzelot *'The Policing of Families'* London, Hutchinson (1980).

<sup>19</sup> L Finley *'Breaking Women's Silence'*, in P Smith *'Feminist Jurisprudence'* Oxford, Oxford University Press (1993).

<sup>20</sup> H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p27

<sup>21</sup> This may include imagining ways in which the world could / should change, recovering repressed and unarticulated viewpoints and rethinking what is excellent and worthy of praise. As has been done by relational and, arguably, radical feminists.

<sup>22</sup> The concept of deviance is examined below: 'Deviance'.



this thesis. They form themes in the cases of the defence and prosecution and are exemplified or exaggerated by the adversarial nature of the trial.<sup>23</sup>

Postmodern feminist work challenges the dualistic categorisation of male and female and the binaries that spring from it, such as good and bad femininity. Feminist work reveals that failure to 'fit' a category is often not a problem of 'deviance'. It is merely a failure to fit *constructed* categories or norms of gender which law and other discourses fix according to sex, so that being female is associated with certain traditional/stereotypical femininity and being male is associated with masculinity.<sup>24</sup> It is the prevalence of these categories that means that a failure to 'fit', combined with law's disapproval of gender inappropriate behaviour, can result in the classification of a person or group of persons as deviant and there is a consequent tendency to treat those who fail to conform less favourably.<sup>25</sup>

In feminist analyses of the legitimacy of the norms of female roles and nature three possible alternatives emerge, femininity / femaleness can only be either 'natural' / biological<sup>26</sup> or socially constructed or, alternatively, a combination of both. Many contemporary feminist theorists challenge the legitimacy of both law's association of sex and gender and the assumption that the content of the category of 'femininity' is pre-social or 'natural', thus also challenging the notion that those who fail to 'fit' the category of femininity are deviant.<sup>27</sup>

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<sup>23</sup> See Ch 3.

<sup>24</sup> Law's division of persons into the distinct and discrete categories of male and female is most evident in its refusal to recognise the supposedly incongruous sex and gender of transsexuals. Despite living their lives as, for example, physically male and psychologically female, transsexuals are refused legal recognition of that discordance. e.g. *Corbett v Corbett*, *Rees v UK* and *Cossey v UK* Supra No. 9.

<sup>25</sup> See 'Deviance', below.

<sup>26</sup> The biologist approach, like law, assumes that men and women's natures are fundamentally different. Gender (behaviour and personality traits) and sex (chromosomes, hormones and anatomical structures) are perceived to be intimately connected so that femininity comes from femaleness and masculinity from maleness. Women's role as mother, for example, encourages notions of women's concern with relationships and caring, as a result her nature or gender identity is almost indistinguishable from her sex identity. See C Gilligan *'In a Different Voice: psychological theory and women's development'* Cambridge, Mass, Harvard University Press (1993). However, with the advent of postmodernism came the delegitimisation of the association of sex and gender and the recognition of gender as a social construct. Pure biologist conceptions of woman fail to account for the effect of socialisation on both men and women.

<sup>27</sup> For an example of this type of work see C Smart and B Smart (Eds) *'Women, Sexuality and Social Control'* London,



Postmodern feminism also takes account of the effect of environment upon gender. Concepts of gender, according to these analyses, are dependent on culturally constructed notions of masculine and feminine. Instead of assuming that any one theory can speak for or identify 'womanhood' or 'femaleness', theorists accept that no-one can speak for woman as there is no essential 'she' and no person exists outside the gendered notion of 'her'. In postmodern feminism's exploration of sex and gender a number of positions regarding the nature and extent of social construction emerge. From the most pure constructionist version that both sex<sup>28</sup> and gender<sup>29</sup> are constructed to a version that notes that social construction works in conjunction with our biological selves.<sup>30</sup>

The purely social constructionist conception of gender understands it as having no fixed essence,<sup>31</sup> but recognises that social and gender relations have created two categories of persons the content of which differ across culture and time.<sup>32</sup> Various psychological explanations for gendered behaviour are proposed. For example, post-natal separation of male children from their mothers allows them to develop separate, masculine identities (independence, self sufficiency), failure of the male child to separate will lead to the child adopting its mother's, feminine, identity.<sup>33</sup> The child's identity is constructed deep in the unconscious and, therefore, remains unaffected by superficial changes, for example, in law.<sup>34</sup>

Such theories rest on two assumptions, first that the body is neutral / passive in the formulation of the conscious and secondly that gender can be altered by restructuring and reformulating social and cultural practices. Current social practice creates in boys and girls, and men and women very different expectations. Boys are raised with the expectation that they will be primarily wage earners and secondly carers, whereas girls are raised with the expectation that they will be mothers and as such are entitled to spend time with their children for whom they will be the primary carer.<sup>35</sup>

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<sup>28</sup> J Butler *'Gender Trouble: feminism and the subversion of identity'* Routledge, New York (1990), Ch 1.

<sup>29</sup> S Firestone *'The Dialectic of Sex: the case for feminist revolution'* St Albans, Paladin (1972).

<sup>30</sup> M Gatens *'A Critique of the Sex / Gender Distinction'* in S Gunew *'A Reader in Feminist Knowledge'* London, Routledge (1990)

<sup>31</sup> Meta theory: L Nicholson *'Feminism / Postmodernism'* New York, Routledge (1990) p.40.

<sup>32</sup> L Nicholson *'Feminism / Postmodernism'* New York, Routledge (1990) p.44.

<sup>33</sup> R Stoller *'Sex and Gender'* London, Hogarth Press (1968).

<sup>34</sup> M Gatens *'A Critique of the Sex / Gender Distinction'* in S Gunew *'A Reader in Feminist Knowledge'* London, Routledge (1990).

<sup>35</sup> Ibid. Although it should be noted that the beginnings of departure from this position are evident.



Instead of questioning the gendered structure of society, however, gender roles continue to be accepted as 'natural' within society. Continued acceptance, particularly by women who are oppressed by the gender system, is explicable by the power of hegemony<sup>36</sup> and society's reluctance to recognise gender as a social construct.<sup>37</sup> However, it is argued that this explanation of the formation of subjectivity fails to take account of biological differences and to explain *why* gender is distributed in particular ways; assigning dominating characteristics to men and subservient characteristics to women.

This major problem with a purely constructionist understanding of women lies in the fact that there are other dimensions involved in the construction of gender. Class, economic practises, social practises and biology can all effect the construction of sex and gender. For example, woman has traditionally been perceived as the weaker sex, a perception that is the consequence of and has precipitated the lesser value attributed to her by society and the private, domestic role she plays in it. Biology can explain in part differing gender assignment and differing degrees of acceptance of gender roles. For instance, during the eighteenth and nineteenth centuries most women's status as almost permanently pregnant and often incapacitated by pregnancy and childbirth,<sup>38</sup> as compared to men's independence and thus greater capacity to provide,<sup>39</sup> or simply women's lower ratio of muscle to fat,<sup>40</sup> may explain in part their construction as passive and caring. However, the role of society can not be excluded. For example, industrialisation, which gave rise to the male-headed breadwinner family form, confirmed and compounded women's familial/caring role.<sup>41</sup> For example, the effect of women's constraining clothing should not be ignored; corsetry affected the shape of women's bodies for years and the design of her shoes affected her speed and agility.<sup>42</sup>

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<sup>36</sup> "...a hegemony of norms, perceptions and beliefs" : P Smith *'Feminist Jurisprudence'* Oxford, Oxford University Press (1993) p.545.

<sup>37</sup> L Nicholson *'Feminism / Postmodernism'* New York, Routledge (1990) p44.

<sup>38</sup> P Smith *'Feminist Jurisprudence'* Oxford, Oxford University Press (1993) Ch. 21.

<sup>39</sup> A Jaggar *'Feminist Politics and Human Nature'* Totowa (NJ), Rowman and Allanheld, Brighton, Harvester (1983) Ch 5.

<sup>40</sup> N Angier *'Woman: an intimate geography'* Virago, New York (1999) p 290.

<sup>41</sup> F Williams *'Social Policy: a critical introduction: Issues of Race Gender and Class'* Cambridge, Polity Press (1989) Ch.6.

<sup>42</sup> R Tong *'Feminist Thought'* London, Routledge (1989) p.134.



Similarly, her small frame may, for example, be the consequence of her previously low familial status and resultant poor diet.

The relationship between biology and gender is complex. Each reacts and impacts upon the other producing a nexus of characteristics of indeterminate origin. Ultimately, therefore, pre-social sex and gender are unidentifiable. For example, social factors can effect biology. The potential impact of these social elements is illustrated by the continuing and shifting development of women's biological selves. For example, women are becoming larger, more agile and athletic. Similarly, ideas we have about gender can shape our understanding of biology. For example, our understanding of passivity as feminine and activity as masculine can shape scientific understandings of biology: traditionally, the active sperm has been perceived as penetrating the passive ovum, however, an alternative understanding of the process is that the ovum selects and engulfs the sperm.<sup>43</sup> Likewise, biology is not a prescription for gender. For example, traditionally 'feminine' characteristics, such as passivity, masochism, narcissism, envy and shame are not merely the product of female biology; they are 'manifestations of and reactions to ideas we have about our biology from the cultural and historical context'.<sup>44</sup> Female biology and feminine characteristics are not inevitably wedded together. This is most vividly demonstrated by hermaphrodites and transsexuals; such people illustrate that to be biologically female does not necessarily mean that a person will identify with being socially female. Biology, it has been argued, is, therefore, not a prescription for gender but a recommendation.<sup>45</sup>

It is the combination of basic biological requirements with cultural, historical and psychological influences that has culminated in the construction of not only gender, but also sex. This understanding of sex and gender notes the effects of social construction on both and refuses to accept the concept of either an essential woman or an essential man. Women's 'role' and 'nature' and her subsequent oppression through her status as the 'other', therefore, have no basis in either her femaleness or her femininity, as both are part of a constructed reality. The effect of this analysis is to destabilise the preconceived ideas we hold about every aspect of others and ourselves. From this

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<sup>43</sup> M Gatens 'A Critique of the Sex / Gender Distinction' in S Gunew 'A Reader in Feminist Knowledge' London, Routledge (1990).

<sup>44</sup> Ibid. p149.



platform an analysis of the world around us reveals that the everyday judgments we make about what is right, good and natural are heavily influenced by assumptions laced with notions of sex and gender.

If the feminine norms against which law and other discourses compare and define women are either partially or wholly constructed, the undeniable consequence is that women, whether they conform or not, are subject to discrimination and unjustifiable oppression in every aspect of their lives. For a woman who is seen as conforming, the contemporary understanding of woman shapes the direction of her life from the moment she is born. Society's understanding of her defines her in opposition to man, restricts the options available to her and affects the acceptability of the choices she makes. Women who do not conform, making non-feminine, socially unacceptable choices, suffer further oppression through law and society's condemnation. This is particularly evident in the criminal law's response women who offend. They are doubly deviant, having breached both criminal laws and norms of feminine behaviour. In revealing the use of these categories (male/female, conforming/nonconforming), by challenging their content and thus revealing their constructed nature, postmodern feminism challenges the oppression of both those who conform and those who do not.

Postmodern feminist work has first, uncovered the socially and legally constructed ideal nature of woman and the 'role' which she is consequently allocated in society. The legally expounded ideal types include women as domestic, caring/maternal and sexually conservative, they are examined in detail below. Legal feminist work has identified the attempts by law to demonise women who fail to conform to the constructed norm/role. Demonisation classifies those who cannot or who refuse to conform to legal norms as 'different', deviant and offensive. It both shores up existing norms through condemnation of aberrations and helps to justify differential treatment and punishment of those who fail to conform. For example, it is argued that women who commit crimes are more harshly treated (punished) if they fail to demonstrate their femininity to the court as they are perceived to be doubly deviant: deviant in terms of both their criminality and their femininity.<sup>45</sup> They then frequently enter a process whereby the criminal justice process seeks to modify and feminise both their offending and social

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<sup>45</sup> R Tong *'Feminist Thought'* London, Routledge (1989) p.129.

<sup>46</sup> 'The Incongruity of Women and the Criminal Justice System' below.



behaviour. For example, probation orders or female imprisonment include a degree of 'feminisation' as part of their processes.<sup>47</sup> However, feminist work has also found that those whose behaviour is non-conformist may be presented as 'normal' or conforming, in spite of their non-conformity.<sup>48</sup> This minimises the disruption such women present to the norms of femininity and it can reduce the degree of punishment imposed by reducing their perceived deviance.

This thesis examines the operation of norms of femininity as part of the courtroom process. It reveals that, as a consequence of the pervasive nature of the constructed norms of legal femininity in the legal system and the consequences that flow from conformity or non-conformity, it (the norm) is a commodity in criminal trials. Thus, this norm can be exploited by those working in the criminal justice process in attempts either to condemn or reprieve the accused. This thesis examines the way in which Rosemary West and Myra Hindley were compared to the constructed legal norms of 'wife', 'mother', 'maternal' and 'carer'. Through detailed content analysis,<sup>49</sup> it examines the importance of categorising defendants as conforming or non-conforming in the trial process. In both cases the defence constructed the women as feminine and, thus, as unlikely to commit crimes of the type they were accused of. The prosecution in each case provided a profile of the women as the antithesis of femininity and, thus, as deviant. The prosecution's approach has several functions. Firstly it evokes anger. Secondly it makes their having committed such unfeminine crimes possible in the minds of the jury. Third, it identifies them as anomalies in need of normalisation and punishment. Finally it shores up existing norms by presenting them as dangerous aberrations. In doing so this construction justifies their treatment as different both from other women<sup>50</sup> and their male partners.

### **Legal Constructions of Woman**

The postmodern approach of this thesis and thus its concentration on the use of gendered stereotypes demands an exploration of the way in which woman is constructed

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<sup>47</sup> See H. Allen *'Justice Unbalanced: gender, psychiatry and judicial decisions'* Oxford, OUP (1987) This is explored further below: 'The Incongruity of Women and the Criminal Justice System'.

<sup>48</sup> A Worrall *'Offending Women'* London, Routledge (1990) Ch. 5

<sup>49</sup> See Appendix 7.



by law. An examination of law's construction of woman provides a clear picture of the foundations upon which counsel base their portrayals of Rose West and Myra Hindley. 'Traditional woman' is the yard-stick against which non-conformity is measured. 'Woman' is understood by law as domestic, sexually conservative and as a mother/carer. The very word 'woman' implies each of these elements, this trilogy is located in the subconscious and so the one word 'woman' symbolises the union of these three elements.<sup>51</sup> Feminist work has revealed that these constructions are the ideal type (the female norm) against which women are judged. The following sections examine the constitution of this construction through law, which, as we will see, was to be played out in the trials of Rose West and Myra Hindley.

### **The Man of Law and the Maleness of Law**<sup>52</sup>

The way in which women are perceived, constructed and treated by law is meaningful only after an examination of what law has forged as the norm, namely the 'man of law'.<sup>53</sup> It is against this standard that both men and women are compared and although law has developed more specific models of man and woman in relation to the family and children, the man of law is the model person upon which law is founded.

Law conceives of a very specific notion of the person; first and foremost he is a man. He is identifiable as a man primarily through the attributes law expects of him and indeed values in him: he is assertive, articulate, independent, calculating, competitive, competent, tough, educated, middle-class and white.<sup>54</sup> He lives and works in a free-market society and, most importantly, he is (largely) free from domestic responsibilities.<sup>55</sup> His concerns are also the concerns of law, they are the protection of property and the preservation of his right to make a profit. He is as unlike the legal conception of woman<sup>56</sup> as is possible.

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<sup>50</sup> The differential treatment of conforming and non-conforming women will be explored below: 'The Incongruity of Women and the Criminal Justice System'.

<sup>51</sup> J Lacan *'Ecrits: A Selection'* London Tavistock (1977).

<sup>52</sup> The construction of masculinity is examined in Ch 4.

<sup>53</sup> N Naffine *'Law and the Sexes'* Sydney, Allen and Unwin (1990).

<sup>54</sup> Ibid Ch. 1 & 2.

<sup>55</sup> R Collier 'Waiting 'Til Father Gets Home : the reconstruction of fatherhood in family law' (1995)

*Social and Legal Studies* Vol 4 15.

<sup>56</sup> Below: 'Legal Woman'.



This perception by law of its players and actors<sup>57</sup> is responsible for compounding and perpetuating not only the oppression and devaluation of women, but also the differential and oppressive treatment of men who fail to conform to the standard of the 'man of law', for example working class men.<sup>58</sup> Women who become the subject of laws are also subject to the male interpretation and understanding of their experience as it is male experience and values that dominate legal reasoning. So, for example, rape is defined as penetration, not as sexual violation.<sup>59</sup> Tort damages are based on loss of earnings, which precludes many women, as their work is often unpaid, and does not adequately account for emotional harm.<sup>60</sup> Labour law, in its implicit assumption that relations can be resolved through negotiation, ignores the unequal power relations of men and women in the work place.<sup>61</sup> More extreme examples expose women who cannot measure up to the 'man of law', they are reduced by law to no more than their bodies.<sup>62</sup> Feminist analysis has further examined the law revealing that, for example, were the law has begun to accept female accounts of reality its interpretation of them perpetuates the traditional construction of women. For example, the inclusion of evidence of battered women's syndrome in defences for women who kill maintains the image of women as passive sufferers and not as agents acting to save their own lives.<sup>63</sup>

The 'maleness' of legal reasoning is perhaps most clear through legal concepts such as the 'reasonable man'. Although the reasonable man may now take on many characteristics and may even be a woman, many 'female' characteristics are regarded as 'quirks' and so may not be accounted for by the reasonable person. Furthermore, the reasonable man is merely a vehicle for the application of legal logic by men, therefore,

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<sup>57</sup> Including judges, lawyers, plaintiffs, defendants, and appellants.

<sup>58</sup> It should also be noted that men too are sometimes unable meet the standard of the man of law, see R Collier 'Waiting Til Father Gets Home : the reconstruction of fatherhood in family law' (1995) Social and Legal Studies Vol 4 15.

<sup>59</sup> For an analysis of the criminal law see C Smart '*Feminist Approaches to Criminology or Postmodern Woman meets Atavistic Man*' in L Gelsthorpe and A Morris '*Feminist Perspectives in Criminology*' (1990).

<sup>60</sup> H Kennedy '*Eve Was Framed: women and British justice*' London, Vintage (1993) p27.

<sup>61</sup> J Conaghan '*The Invisibility of Women in Labour Law*' in F Olsen '*Feminist Legal Theory II*' Aldershot, Dartmouth (1995) Ch.15.

<sup>62</sup> E.g. objections to pornography framed by women in terms of degradation are hopeless in the face of male justifications framed as rights to free expression. E.g. The Contagious Diseases Act 1860.

<sup>63</sup> E Schneider '*Describing and Changing Women's Self Defence Work and the Problem of Expert Testimony in Battering*' in F Olsen '*Feminist Legal Theory II*' (1995) Ch. 8.



the fundamental understanding of the impact of events on the reasonable person will continue to be an assessment of events as understood by men.<sup>64</sup>

The domination in law by male judges, magistrates and lawyers (hereafter personnel)<sup>65</sup> and the maleness of law (as identified by the second wave feminists) compounds this situation, as the male perspective is perpetuated and unquestioned by them. The process of the entrenchment of male norms is inevitable both due to the location of legal personnel in the male dominated world and the insistence by law that it and its administrators can see objectively despite the male character of the legal system which is described by Kennedy as:

... a cultural aura that excludes women and is so familiar to such men that they are oblivious of it. It is the oxygen of their mutuality. When you try to take it away panic sets in. They are in terror that they will never breath again.<sup>66</sup>

Thus law's understanding of a 'person' is actually a man. Woman, therefore, becomes the other. She is the other of the binaries that define man; she is apparently irrational, illogical, passive and dependent. Thus, despite law's concentration on the man of law it does not entirely ignore 'woman' but is instrumental in, and part of, society's construction of her.<sup>67</sup>

### **Legal Woman**

Woman's otherness is exemplified through the trilogy of domesticity, maternity and conservative sexuality as noted above. The pervasiveness of this trilogy in law is evident from the now prolific body of feminist research that seeks to reveal the constructions of female subjectivity embodied in law in all its forms. These

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<sup>64</sup> See further examples relating to the criminal law below.

<sup>65</sup> In 1991 there was a total of 550 Judges, of which one Lord Justice, 2 High Court Judges and 19 Circuit Judges were women : H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p.30. It is worth noting that all major 'personnel' in the trials of Rose West and Myra Hindley were male.

<sup>66</sup> H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p.141.

<sup>67</sup> Although the areas in which woman is explicitly made a subject of law tend to be restricted to those



constructions played a major role in the construction of the cases by the prosecution and defence in the trials of Rose West and Myra Hindley. The tactics adopted by counsel were not new, but drew on tried and tested methods and constructions, usually most evident in rape trials,<sup>68</sup> and followed a formula easily recognisable in the courtroom. The 'ideal type' provided a model of femininity that the defence sought to reproduce in their constructions of the female defendants. In contrast, the prosecution sought to represent the defendants as the antithesis of femininity.

## Domestic

Women have been and continue to be constructed by various legal means as belonging in the private realm of the home, the public realm of the workplace being reserved for men. Women's private role in the family, it has been argued, grows out specific historical circumstances and has become enshrined in the law and is continued because of law and other discourses' insistence on its natural origins. However, historical analysis<sup>69</sup> reveals that the nuclear family, headed by the breadwinning male with the support of the domestic female, is not a natural phenomena but one which has formed during specific times and in specific places.<sup>70</sup> In the United Kingdom it is a phenomenon that occurred as a consequence of industrialisation, before which families survived predominantly through subsistence farming. The family group was structured around the members of the household, the content of which was not dictated by blood-ties but by the nature of the work which the family was required to do. Work was shared by family members, child-care often being delegated to siblings, and all members participated in labour. Industrialisation brought the growth of towns, household units and property ownership and thus the family lineage and blood-ties determined the family form. Eventually enough wealth was created by industrialisation

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affecting the family and children.

<sup>68</sup> J Temkin 'Prosecuting and Defending Rape: perspectives from the bar' *Journal of Law and Society*, Vol 27, No2, June (2000), 219.

<sup>69</sup> Eg C Smart and B Smart (Eds) *Women, Sexuality and Social Control* London, Routledge (1978) Ch 2.

<sup>70</sup> For example the male headed family was legally supported by Roman Law. The oldest male relative had absolute power over his descendants, including rights over the person (exposure of newborns, power of life and death, sale surrender and recovery, marriage and divorce), rights over property and contract, and the right to emancipate members of the family. See A Borkowski *Textbook on Roman Law* London, Blackstone Press (1994).



for the male breadwinner family model to take shape, one partner generating sufficient income for the family.<sup>71</sup> Despite this, religious, medical and scientific ideology assumed the naturalised superiority of the husband / father in the household. Law responded by installing the father / husband as the legal head of the family unit, endowing only him with rights to property, over children<sup>72</sup> and almost exclusive rights to the workplace.<sup>73</sup>

It is through their legal exclusion from the workplace via a number of statutes that women were confined to a domestic, caring, supportive role in the past.<sup>74</sup> Government action has not, however, been restricted to statutes regulating employment. In 1870, through the establishment of state education, the government was able to ensure that women received specific training in domestic work and child-care and since the 1920s women have been bombarded with child-care manuals and public information films<sup>75</sup> which further define their role as wife / mother / carer. Whilst statutes have pushed women from the workplace into the home, these media help to define the nature of their role there.

The resultant family model, male headed household comprising of a working husband and 'house-wife' plus children, which had developed as a consequence of various economic and social changes and government action became known as the breadwinner model. The pervasiveness of the nuclear, breadwinner family, particularly during the growing wealth of the late 1940s and 1950s,<sup>76</sup> has enabled government to pass additional legislation encompassing assumptions about the roles of women and men under the guise of the indigenous nature of those roles, thus further entrenching the norm of female dependency and domesticity.

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<sup>71</sup> F Williams *'Social Policy, A Critical introduction: issues of race gender and class'* Cambridge, Polity Press (1989) p150

<sup>72</sup> *Agar-Ellis v Lascelles* (1883) 24 Ch.D 317, see also R Collier *'Waiting 'Til Father Gets Home : The Reconstruction of Fatherhood in Family Law'* (1995) *Social and Legal Studies* Vol 4 15

<sup>73</sup> Although it should be noted that women were also economically active, their role and 'right' to access to the workplace was limited.

<sup>74</sup> The Factory Act 1844 first restricted women's access to the workplace, controlling not only where they were employed but also the number of hours they were able to work. Restrictive legislation continued to be passed, mainly through laws relating to benefit and social security entitlement. 1921 saw the introduction of the 'Genuinely Seeking Work Test', which assumed that married women were not seeking work. A similar theme is evident in the Anomalies Act 1931 which assumed that married women leaving work were retiring. Both measures ensured women's classification as 'housewife' and restricted their entitlement to unemployment benefits.

<sup>75</sup> Other vehicles include the media, cautionary tales and popular culture : A Diduck 'Legislating Ideologies of Motherhood' : *Social and Legal Studies*, Vol 2, (1993) 461

<sup>76</sup> Thus freeing women from the work-place and the necessity to financially contribute to the upkeep



Instrumental in this process was the Beveridge Report<sup>77</sup> and the legislation in which it culminated.<sup>78</sup> The ideological roots of the report clearly envisaged women as domestic and limited to the private realm: '(women's role is) ensuring the continuance of the British race and British ideals in the world.'<sup>79</sup> By failing to give women independent status in the income maintenance schemes the report constructed married women as financially dependent on their husbands, their benefit entitlement was calculated on the basis of his contributions.<sup>80</sup> The report also contained a punitive element stopping women's entitlements based on their husband's contributions in the advent of the ending of the marriage through divorce, but not through death.<sup>81</sup> The essence of measures constructing women as dependents persist today.<sup>82</sup> Likewise, the failure of the Beveridge Report to value, traditionally entitled, 'women's work'<sup>83</sup> or to give them practical assistance in fulfilling their defined role<sup>84</sup> colours governmental attitudes today. Whilst the Beveridge Report constructed very specific norms of family type and roles, employment law continued to adopt various measures which supported the Beveridgian conception of family, driving women from the workplace into the home.<sup>85</sup>

Assisting in law's effort to bar women from the public domain and to keep them firmly established in the home are criminological theories<sup>86</sup> which decry the dangers of emancipation and freedom by associating them with the rise in female offending.<sup>87</sup> For example, Simon argues that as women expand into new (public) territory a rise in

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of their families.

<sup>77</sup> 1942

<sup>78</sup> The Education Act 1944, The Family Allowances Act 1945, The National Insurance Act 1946 and the National Assistance Act 1948.

<sup>79</sup> 'The Beveridge Report' 1942:52.

<sup>80</sup> See C Smart and B Smart (Eds) *'Women, Sexuality and Social Control'* London, Routledge (1978) Ch1.

<sup>81</sup> I.e. if the male breadwinner of the family died. These provisions are not unlike the Poor Law 1834 which distinguished between unmarried mothers, separated wives and widows, penalising unmarried mothers as a consequence of their status.

<sup>82</sup> Although strong pressure brought to bear on the government in the 1990s culminated in the improvement of women's rights to pensions based on their husbands income after divorce.

<sup>83</sup> As was evident through the disappointingly low rate at which family allowance was set.

<sup>84</sup> For example, none of the promised communal laundries, restaurants and nurseries materialised.

<sup>85</sup> The Social Security Act 1986 had the effect of discouraging married women from taking part-time employment by stopping their husband's benefits in the event of their employment. Even the protective employment legislation of the 1960s penalised part-time workers, the majority of whom are women, through its failure to award them employment rights, including maternity leave.

<sup>86</sup> For example 'Control theory': See T Hirschi *'Causes of Delinquency'* University of California Press (1969).



female crime is inevitable.<sup>88</sup> These theories praise domesticity and motherhood for its role in controlling and restricting the behaviour of women and will be explored further below.

### **Sexually Conservative**

The second strand frequently evident in law's constitution of the subject of women is sexuality. Ideal notions of female sexuality portray and perceive women to be sexually passive and conservative. This contrasts with the perception and construction of men's sexuality, which is as 'sexually aggressive'.<sup>89</sup>

At one time it was thought that women had no sexual desire at all: 'The majority of women are not very much troubled with sexual feeling of any kind.'<sup>90</sup> This quote reveals an assumption that persists today and upon which a dualistic understanding of sexuality is based; there are those women who are sexually passive and those who are not and as sexual passivity is the perceived and portrayed female 'norm', promiscuity is a deviancy. This construction has been identified as creating 'a double standard of morality'.<sup>91</sup> The double standard means that sexual aggression is condoned in men, but not in women. This construction of sexuality is heavily exploited in both the trials of Rose West and Myra Hindley. The portrayal of their sexual subjectivity was disputed by the defence and prosecution, the prosecution sought to link the women to the crimes and to damage their characters through their portrayal as sexually aggressive and deviant.<sup>92</sup>

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<sup>87</sup> See N Naffine *'Female Crime: the construction of women in criminology'* Sydney, Allen and Unwin (1987) Ch. 5.

<sup>88</sup> R Simon *'Women and Crime'* (1975) Mass; Heath Publishing. Although research has been widely criticised for failing to illustrate a causal relationship, others have argued that research has revealed that there is no relationship, S Box and C Hale 'Liberation and female criminality in England and Wales Revisited' (1983) *British Journal of Criminology*, 22, 35.

<sup>89</sup> For example, rape has been explained as men acting on their 'natural impulses' see C Smart *'Women, Crime and Criminology'* Routledge and Kegan Paul: London (1977) p95.

<sup>90</sup> W Acton *'The Function and Disorders of the Reproductive Organs'* London, John Churchill (1857), p32.

<sup>91</sup> C Smart and B Smart (Eds) *'Women, Sexuality and Social Control'* London, Routledge (1978), Introduction.

<sup>92</sup> This type of attack on character via sexual evidence has been observed as a tactic of advocacy in rape trial, see J Temkin 'Prosecuting and Defending Rape: perspectives from the bar' *Journal of Law and Society*, Vol 27, No2, June (2000), 219, J Temkin 'Sexual History Evidence - The Ravishment of section 2' (1993) *Crim LR*, 3.



Whilst the norm of sexual passivity is perhaps most evident historically,<sup>93</sup> the notion of passivity is still evident today and continues to impact on women's lives inside and outside of the courtroom. For example, by constructing women's sexuality as private and passive, and thus limited to their relationship with their husbands, women's construction as 'wife' is supported, and so are the associated implications of private/domestic construction.<sup>94</sup> The postmodern feminist analysis of sexuality demands us to question this norm and to ask, can 'natural' sexuality, male or female, be identified at all. Is it not a response to society and culture?<sup>95</sup> The assumption of natural female sexual passivity is embodied in law and reveals itself in the following examples. First, through punishment or disapproval of active or aggressive sexuality, either embodied in statute or evidenced in judicial and other responses to active sexuality. Secondly, through the assumption of women's passivity in law relating to sexual offences.

Aggressive sexuality or promiscuity has been specifically disapproved in both civil and criminal law. For example women, who committed adultery have been punished through family law decisions: 'It would never be in the interests of a child to be entrusted to the care of a woman who had committed adultery.'<sup>96</sup> Similarly, lesbians are deemed inherently unsuitable carers for children, thus cases illustrate a preference for heterosexual mothers and implicitly disapprove of 'deviant' sexuality.<sup>97</sup> Sexuality in the above-cited cases had nothing to do with the relevant issue (childcare), yet the women's sexuality was drawn into consideration regardless. Although women may no longer be so explicitly punished in divorce and childcare proceedings for their inappropriate sexuality, law continues to regard the 'problems' associated with so-called promiscuity and sexuality as primarily the responsibility of women.<sup>98</sup>

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<sup>93</sup> See S Edwards *'Female Sexuality and the Law'* Ch 1, Martin Robertson Oxford (1981).

<sup>94</sup> See M McIntosh *'Who needs prostitutes? The ideology of male sexual needs'* in C Smart (Ed) *'Women Sexuality and Social Control'* London, Routledge and Kegan Paul (1978) and D. Nicolson in 'Telling Tales: gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2, 185.

<sup>95</sup> M McIntosh *'Who needs prostitutes? The ideology of male sexual needs'* in C Smart (Ed) *'Women Sexuality and Social Control'* London, Routledge and Kegan Paul (1978).

<sup>96</sup> Judge Wallington 1950 cited in P Pattullo: *'Judging Women: a study of attitudes that rule our legal system'* London, NCCL Rights for Women Unit (1983) p.25.

<sup>97</sup> Residence has been denied on the basis of the mother's sexuality ; *S v S* (1977), but residence with a lesbian couple is considered marginally better than Local Authority care ; *Re P* (1983) 4 FLR 401, although there is a preference for 'the norm' ; *C v C* (1991) FLR 223.

<sup>98</sup> This is perhaps unsurprising given that sexuality in terms of 'permissiveness' has been cited as another phenomena potentially responsible for the breakdown of the family; Sir Keith Joseph 1977 cited in R. Lister *'Back to the Family: family policies and politics under the Major government'* Paper presented at the 'Social Policy Association Annual Conference' (1995) .



Women's sexuality has been constructed as passive through a number of laws that fail to countenance female sexual aggression.<sup>99</sup> Yet despite this presumption of passivity the law punishes women for their promiscuity, permissiveness or aggression, thereby identifying and creating a deviant form of female sexuality. An early example of such a law is the Contagious Diseases Act 1864. This Act 'blamed' the transmission of diseases on (female) prostitute women rather than their clients. The consequence of stigmatising one party over another is the placing of women at the centre of punitive legal controls<sup>100</sup> whilst excusing the other (male) party. Such examination and regulation was also practised in the 1920s and 1930s when young girls coming before the juvenile courts were routinely subjected to intimate examination to establish their virginity.<sup>101</sup>

Today the criminal law continues to differentiate between the sexual conduct of men and women. For example, girls (and not boys) often come before the juvenile court, not for offending, but for 'sexual delinquency'.<sup>102</sup> Perhaps the most enlightening example is the offence of soliciting.<sup>103</sup> Law regulating prostitution still regulates women rather than their clients and refuses to recognise male prostitution. Prostitution law is a frequently cited as a particularly enlightening example as it addresses specifically women and men's sexual behaviour. The punishment of 'deviant' female sexuality is evident in the different treatment of prostitute women and their clients through the differing police policies regarding their arrests. Two overt acts of curb crawling are required before a man can be arrested, furthermore, he is unlikely to be charged and will not be 'stigmatised' by the event,<sup>104</sup> whereas prostitutes are frequently picked up for

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<sup>99</sup> The assumption of women's natural, sexual passivity, which justifies the disapproval and punishment of sexual permissiveness, is also evident in the criminal law. It is assumed that women are incapable of offences involving sexually aggressive behaviour, for example, until recently it appeared that law precluded the possibility of women indecently assaulting minors (see S Edwards : *'Women on Trial: a study of the female suspect, defendant and offender in the criminal law and criminal justice process'* Manchester, Manchester University Press (1984) Ch.4 p.112). Although *Faulkner v Talbot* ((1981) 3 WLR 1528) involved the first conviction of a woman for this offence, the prosecution of a woman for unlawful sexual intercourse with a minor remains impossible under the law, as do prosecutions of women for rape and offences of incest (although women of consenting age can be convicted of 'submitting' to incestuous sexual relations). Similarly, a woman cannot be charged with indecent exposure, only outraging public decency (Public Order Act 1936 s5, for a fuller discussion of these examples see S Edwards *'Female Sexuality and the Law'* Martin Robertson, Oxford (1981) Ch1).

<sup>100</sup> Women were forced to undergo examination, and if necessary, treatment.

<sup>101</sup> M Chesney Lind *'The Female Offender'* Sage: London (1997) Ch 4.

<sup>102</sup> See the findings cited in F Heidensohn : *'Women and Crime'* Basingstoke, MacMillan (1996) p.49-50.

<sup>103</sup> The Street Offences Act 1959 s1(1).

<sup>104</sup> McLeod *'Women Working: prostitution now'* Helm: London (1982).



'loitering'<sup>105</sup> and are subject to the stigma of construction as deviant.<sup>106</sup> Through this concentration on prostitute women rather than their clients law's sanctions are concentrated on the seller whose sexuality is rendered problematic and depraved, whereas the actions of the buyer are excused as an expression of his (valid) sexual needs. Similarly the different treatment of prostitute women and pimps reveals that the actions of pimps (keeping a brothel or exercising control over a prostitute) which are infrequently prosecuted, are less offensive to law than the problematic sexuality of prostitute women.<sup>107</sup>

It is perhaps, however, the construction of women's sexuality in the courtroom which is most pertinent for the purposes of this study. Women both as victims and perpetrators are often either approved or disapproved of by law on the basis of their sexuality. As offenders women's sexuality is regularly commented on in social enquiry reports.<sup>108</sup> The reports in Worrall's<sup>109</sup> study frequently indicated a preference for sexual passivity and permanence of relationships and often contained negative references to the promiscuity of offenders, or used sexuality to explain women's offending, blaming her actions on her poor choice of men.<sup>110</sup> Whilst promiscuity or lack of passivity was potentially damaging to the women's cases, the perceived relationship between the influence of a man and female offending maintained the association of femininity and passivity.<sup>111</sup> However, women who attended to their own sexual needs were subject to a two pronged attack; in attending to their own sexual needs they were also regarded as neglecting the needs of their children, thus offending against requirements to be both sexually conservative and a good, attentive mother. This assumed symbiotic relationship between sexuality and maternity was exploited by the prosecution in Rose West's trial.<sup>112</sup>

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<sup>105</sup> This is a consequence of s1(3) of the Street Offences Act, which allows women to be arrested if there is 'reasonable cause' to suspect an offence. See also H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p.146.

<sup>106</sup> S Edwards *'Women on Trial'* Manchester University Press (1984).

<sup>107</sup> Ibid Ch. 4.

<sup>108</sup> A Worrall *'Offending Women'* London, Routledge (1990) Ch. 4 & 5.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid p.35.

<sup>111</sup> Young single women or older women in positions of authority generally fared worse than passive women in the court : A Worrall *'Offending Women'* London, Routledge (1990) Ch. 5.

<sup>112</sup> See Ch 5.



An explicit example of appraisal on the basis of sexuality was evident in both the trial and the written judgment of Sara Thornton.<sup>113</sup> During the trial there were several questions by the prosecution pertaining to her so-called promiscuity, including for example, her tendency not to wear knickers, and details of her previous relationships. yet this information was superfluous to the case. Her portrayal, as shunning the feminine traits of modesty, sexual passivity and sexual conservatism (among others). facilitated an unsympathetic response.<sup>114</sup>

It is not, however, only female offenders who are subject to sexual evaluation. Female victims have also been shown to be 'judged' during the trials of male offenders. The most obvious example of this being the cross-examination of rape victims.<sup>115</sup> The often difficult issue of consent means that the jury is frequently asked to draw conclusions on the basis of past sexual conduct. As a consequence, 'if you have a nodding acquaintance with the penis in question, the whole business is considered to be altogether less serious.'<sup>116</sup> In the worst cases a woman's sexual history may be taken to imply her consent to the 'alleged' rape. Although legislation has been passed on two separate occasions to restrict this practice, it has on both occasions been largely unsuccessful.<sup>117</sup> However, perhaps the clearest example of law's differentiation between victims' sexually appropriate and inappropriate behaviour is a statement made by the judge presiding in the trial of the Yorkshire Ripper: 'Some were prostitutes, some were women of easy virtue, but the last six attacks involved victims whose reputations were totally unblemished.'<sup>118</sup> He also stated that, 'Some were prostitutes, but perhaps the saddest part of the case is that some were not.'<sup>119</sup> Such statements clearly distinguish the types of female sexual conduct and the types of women approved of or disapproved of by the law.

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<sup>113</sup> See : D. Nicolson in : 'Telling Tales: gender discrimination, gender construction and battered women who kill' (1995) FLS Vol 3, No 2, 185.

<sup>114</sup> Ibid.

<sup>115</sup> J Temkin 'Sexual History Evidence - the ravishment of section 2' (1993) Crim LR, 3.

<sup>116</sup> H Kennedy 'Eve Was Framed: women and British justice' London, Vintage (1993) p.124.

<sup>117</sup> The first restrictive legislation was the Sexual Offences Amendment Act 1976 s2, this failed to stop the use of past sexual history during rape trials due to its discretionary nature (see J Temkin 'Sexual History Evidence - the ravishment of section 2' (1993) Crim LR, 3). As a consequence of the limited success of this provision further legislation was passed (Youth Justice and Criminal Evidence Act 1999 s41). However, this was seriously limited by R v A (Complainants Sexual History) (2001) 2 WLR 1546.

<sup>118</sup> See P Pattullo: 'Judging Women: a study of attitudes that rule our legal system' London, NCCL Rights for Women Unit (1983) p.11.

<sup>119</sup> P Pattullo: 'Judging Women: a study of attitudes that rule our legal system' London, NCCL Rights for Women Unit (1983) p.11.



Thus, it is evident that law disapproves of and punishes aggressive sexuality, both through the substantive law (case-law and statute) and in the oral judgements women are subjected to in the legal process. Yet, in some cases law assumes sexual passivity, thus prohibiting the punishment of women for aggressive sexuality. Thus, it is evident that law is not a uniform system; it both denies and punishes sexual aggression. In spite of or, perhaps in part, because of this contradiction a construction of female passivity through law is clear. Within marriage sex is appropriate,<sup>120</sup> particularly as legal 'woman' is regarded as naturally maternal and law presumes and prefers that mothers be married to the fathers of their children.

### **Mother / Carer**

The third and final strand of legally constructed femininity, which also resonates through the trials of Rose West and Myra Hindley, is 'maternity'. In the trials both women's relations with children were discussed at length. Their apparent lack of maternal feeling was used and exploited by the prosecution to undermine the women's characters and even to attach motive to their crimes, and the presumption of feminine maternity was used by the defence to portray their femininity. Thus, the concept of the 'natural' womanly status of mother and carer forms the basis of the opposing constructions adopted in the cases.

The legal portrayal of women's presumed natural desire for children and their natural ability to care for them is embodied in law. It is evident, for example, in the way in which law attaches mothers, but not always fathers, to their children through 'parental responsibility'.<sup>121</sup> On occasions law, in its various forms, expressly refers to the nature and characteristics of women which render their status as mother 'natural'. For example, the mother in *Re K*<sup>122</sup> is described as the *natural* guardian and protector, and the Adoption White Paper<sup>123</sup> based many of its proposals on the presumption of women's

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<sup>120</sup> C Smart *Women, Crime and Criminology* (Routledge and Kegan Paul: London (1977))

<sup>121</sup> Under the Children Act 1989 unmarried fathers are not automatically awarded 'parental responsibility' for their children, they must apply to the court or seek a 'parental responsibility agreement' with the mother.

<sup>122</sup> (1990) 1 WLR 431.

<sup>123</sup> Para 4.38.



'natural devotion and caring' whilst in contrast the adoption process explicitly prohibits adoption by single men.<sup>124</sup>

Central to the traditional legal notion of the mother is her married status. Historically this is most evident in the infanticide legislation,<sup>125</sup> which was in part designed to protect single mothers who killed their illegitimate children (often children born of raped servants<sup>126</sup>), and in doing so on occasion prioritised marital status and legitimacy over the sanctity of life.<sup>127</sup> Law continues to presume and prefer that mothers are married to the fathers of their children, for example, refusing unmarried fathers automatic parental responsibility and giving preference to family forms which most resemble the nuclear male breadwinner model<sup>128</sup> despite the number of women who now work.

Perhaps the best illustration of law's insistence that mothers be married is the adoption legislation, which was required due to law and other discourses' condemnation of single parenthood and which remains a testimony to the support by law of the stigma surrounding single parenthood.<sup>129</sup> The Adoption Act 1976 carried an inherent assumption that adopting couples should be married, specifically prohibiting adoption by unmarried couples<sup>130</sup> and, through agency policy, all but excluding adoptions by single persons.<sup>131</sup> The now abandoned Adoption Bill (1996) carried very similar themes in relation to the importance of marriage in spite of explicitly disclaiming ideological overtones.<sup>132</sup> Like the Act of 1976 it too prohibited adoption by unmarried couples<sup>133</sup> and whilst allowing adoption by single persons in limited instances it carried a strong

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<sup>124</sup> Re D (1977) AC 617.

<sup>125</sup> The Infanticide Act 1938.

<sup>126</sup> L Chesney Lind *'The Female Offender'* Sage, London (1997) Ch 5.

<sup>127</sup> This law also served a protective purpose, reducing charges of murder to manslaughter, thus recognising the financial and status associated problems of many women in the nineteenth century, see K O'Donovan 'The Medicalisation of Infanticide' (1984) CLR 259.

<sup>128</sup> E.g. in the case of Re DW (a minor) (custody) (1984) 14 Fam Law 244 custody of the child was transferred to the father who was living with his girl friend, the singleness of the mother was perceived to render her inherently unstable. See also *Supra* No 97

<sup>129</sup> In 1968 there were 24,831 adoptions (predominantly of illegitimate children) N V Lowe and G Douglas *'Bromley's Family Law'* London, Butterworths (1992) p.140.

<sup>130</sup> Section 14.

<sup>131</sup> In 1983 and 1984 there were 82 and 81 adoptions by single persons all of whom were related to the child : N V Lowe and G Douglas *'Bromley's Family Law'* London, Butterworths (1992) p.419.

<sup>132</sup> S Jolly and R Sandland 'Ideology and the White Paper' (1994) Fam Law, Jan, 30.

<sup>133</sup> White Paper : *Adoption : The future*, (1993) : para 4.39.



presumption in favour of married couples.<sup>134</sup> Those single persons permitted to adopt were limited to divorced or widowed women. Although this represented a modification of existing policy, the association of marriage and children was sustained by refusal to allow single never-married women to adopt.<sup>135</sup>

The classification of woman as mother and wife are not specific, they are broad assumptions about the nature and preferred status of women. Having slotted women into roles, law goes on to define women's duties within them. Expectations relating to behaviour then become specific, defining very clearly what it means to be woman / wife / mother, the tasks she must perform, the degree of attachment she must exhibit and the nature of her relationships with others, to the point that the day to day lives of women are defined in a sense by law.

Having defined the mother as having primary responsibility for her children the state<sup>136</sup> has enlisted a number of means through which to define her responsibilities and duties to her children.<sup>137</sup> A number of agencies continually assess her ability to perform those duties and correct deviations or failures.<sup>138</sup> For example, social work intervention begins (through legally defined measures) when a mother is perceived to be incapable or unwilling to meet the tasks Western culture has set her. Ultimately, care decisions are made through the assessment of a mother's ability to feed, cloth and care for her child.<sup>139</sup> Law and the media make it clear that 'parents' actually means mother in relation to the day-to-day care of children.

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<sup>134</sup> White Paper : *Adoption : The future*, (1993) : para 4.36 & 4.37.

<sup>135</sup> See White Paper : *Adoption : The future*, (1993) : para 4.36, 4.37, 4.38. A similar attitude toward never-married, single women is evident in the IVF guidelines, which note the duty of clinics to consider the child's need for a father. See Jo Van Every 'Who Is The Family?' Paper presented at the Canadian Sociology and Anthropology Association Annual Conference, Queens University, Kingston, Ontario, June (1991), p.64.

<sup>136</sup> In a legally based study this conception can be narrowed to the 'juristic state' that embodies any person who 'fulfils a function determined by the legal order...' H Kelsen : '*General Theory of Law and State*' Translated by A Wedberg, New York, Russell (1961) p.192.

<sup>137</sup> For example through education : in an attempt to address this '*A framework for the school curriculum*' cited the need to place moral education relating to adulthood and family life alongside sex education in schools : D.E.S (1980).

<sup>138</sup> For example through schools, health workers and Drs. Donzelot '*The Policing of Families*' London: Hutchinson (1980)

<sup>139</sup> Jo Van Every : '*Who is the Family ?*' Paper presented at the Canadian Sociology and Anthropology Association Annual Conference, Queens University, Kingston, Ontario, June (1991), p.69. The responsibility of mothers to raise the next healthy and independent generation became embodied in Conservative Party ideology of the 1980s and 1990s and Edwina Curry has gone so far as to blame the morbidity of the North on mothers' irresponsibility in relation to their children's eating habits. Cited in F



A series of legal decisions illustrate law's expectation that women will 'care for' their children whilst all that is required of fathers is that they 'care about' them.<sup>140</sup> In father's applications for parental responsibility a minimal degree of paternal attachment is required to justify the order. Although, commitment and attachment<sup>141</sup> are usually necessary, this need not be illustrated through contact as that is apparently not a requirement.<sup>142</sup> Indeed, they are illustrated by the very fact that a father is making the application.<sup>143</sup> The threshold may even be so low that an abusive father may be awarded the 'legal gift'<sup>144</sup> of parental responsibility.<sup>145</sup> The father in Re P<sup>146</sup> apparently surpassed the expectation of the average father by actually looking after his child for several days. The cases contrast sharply with the condemnation that befalls mothers who fail to meet the demands that law and other discourses make of them. A mother is required to selflessly put the needs of her children before her own in a way that their father is not. This is evident not only in the way in which she is expected to live her life but even to the extent that law has prioritised the welfare of an unborn foetus over the wishes of its mother in applications to conduct forced caesareans.<sup>147</sup>

The distinction between female caring and male caring is further elucidated by examining the opposite construction of man / husband / father. Law makes this distinction primarily via the tasks and roles each party is assigned. When slotted into household units the two halves, woman and man, become 'one parental unit' able to provide all the services required by the family, rendering single parenthood inadequate in its provision for the needs of mother, father and child. Primarily and most importantly in the family unit there is man; breadwinner and authority figure. Woman is

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Williams *'Social Policy, A Critical introduction: issues of race gender and class'* Cambridge, Polity Press (1989) p175.

<sup>140</sup> C Smart : 'The Legal and Moral Ordering of Child Custody' (1991) 18, Journal of Law and Soc, 485.

<sup>141</sup> Re H (1991) FLR 151.

<sup>142</sup> Re C (1985) FLR 804.

<sup>143</sup> Re S (1995) 2 FLR 648.

<sup>144</sup> Re C (1985) FLR 804.

<sup>145</sup> H v H Fam Law (1988) 216.

<sup>146</sup> (1994) 1 FLR 578.

<sup>147</sup> See : A.Diduck 'Legislating Ideologies of Motherhood' : Social and Legal Studies, Vol 2, (1993) 461. Although this principle has now been weakened by St Georges Healthcare NHS Trust v S [1998] All ER, 673.



constructed as his helpmate, facilitating the more valued masculine occupations, by performing domestic and childcare tasks.<sup>148</sup>

The most important aspect of the male role is his duty to provide.<sup>149</sup> The Judge in B v B<sup>150</sup> made clear his disapproval of a father's decision to become full-time carer for his son: 'the father's primary role must be his work',<sup>151</sup> and, 'a healthy young man like you must generate resources by your work to support your child and yourself.'<sup>152</sup> The judge's understanding of fatherhood was clear, however, the unspoken assumption is that somewhere there is a woman ready, willing and able to care for his child, be it a wife, a member of his family or a nanny. In cases where the father is a single father the court often looks for a family support mechanism, presumably ensuring there is indeed a female carer available to support him in his role as breadwinner by 'caring for' his child.<sup>153</sup> Collier concludes that a father's 'primary familial 'role' or 'function' ... is to 'provide' to be 'responsible' financially.'<sup>154</sup>

It is evident from an analysis of law that a very specific model of 'woman' is constructed and perceived by law: her life is conducted in the private, domestic world, which renders her economically dependent on a man, preferably her husband. Within the private realm of the home her life is conducted around the care of her children and the support of her spouse who is then free to provide for his family. Her sexuality is likewise confined to the home environment where she is again dependent on her husband. Women who do not measure up to his model of femininity, who do not conform, are by definition outside the norm of femininity and are thus deviant. It is this construction of deviant femininity that is exploited in the courtroom.

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<sup>148</sup> Pateman describes this as the 'sexual contract', noting that as part of that contract it is the woman's job to enable the man in the marketplace. Pateman 'The Disorder of Women: women, love and the sense of justice' Ethics (1980) 91, p20.

<sup>149</sup> Constructions of masculinity are discussed in greater detail in Ch 4.

<sup>150</sup> (1985) FLR 166.

<sup>151</sup> Ibid. p177.

<sup>152</sup> Ibid p174.

<sup>153</sup> E.g. Re W (a minor) FLR 492 and May v May (1986) 1 Fam Law 16.

<sup>154</sup> R Collier : 'Waiting Til Father Gets Home : the reconstruction of fatherhood in family law' (1994) Social and Legal Studies Vol 4, 15.



## Deviance

Before examining specific constructions of deviant femininity it is necessary to gain an understanding of the term 'deviance'. This chapter has thus far examined norms of feminine behaviour established by law. The notion of deviance has so far been raised in relation to the examination of norms but has not been explored in its own right. Cohen describes deviant behaviour as behaviour that can be dismissed as meaningless and thereby its significance neutralised.<sup>155</sup> For example, unfeminine behaviour that could challenge the correctness of the norm of femininity can be dismissed as deviant. However, it is also important to understand deviance in its own right rather than merely as a phenomenon that fills the gap produced by the plethora of subjectivities and behaviour that do not adhere to norms. Deviance is more than simply non-conformity, it is in many cases, a construct. It is behaviour that is banned and consequently attracts punishment and/or the creation of an identity that invites disapproval.<sup>156</sup> Although for the purposes of the instant case-study unfeminine behaviour is not 'banned', in the field of criminal justice it does attract disapproval and has been established above, does result in punishment, although not formally or directly.

Deviance theory has become a subject of study in its own right as theorists seek to understand the notion of deviance. Early attempts to understand the concept were positivist in approach. Positivists conceived of deviance as scientifically or biologically explicable, for example, Lombroso sought to identify the biological causes of criminal deviance.<sup>157</sup> However, modern theorists understand deviant identities as a 'creation'. This understanding of deviance demands that the phenomenon be considered in the wider context of power relations, as the power to create deviant identities is integral to the notion of creation. Structural theories of deviance, therefore, understand the creation of deviant identities within the context of power struggles. For example, Marxist theory regards deviant identities as arising from the conflict of class. Acts threatening or challenging capitalism become known as deviant and are thus de-legitimised.<sup>158</sup> Some have argued that this power to determine norms and deviance is the power to 'label'

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<sup>155</sup> S Cohen (Ed) *'Images of Deviance'* Penguin Books (1982), Introduction.

<sup>156</sup> D Downes and P Rock *'Understanding Deviance'* Clarendon Press, Oxford (1982) p26.

<sup>157</sup> C Lombroso *'Crime, Its Causes and Remedies'* Heinemann, London (1913).

<sup>158</sup> P Aggleton *'Deviance'* Tavistock Publications: London (1987) Ch 5.



groups as deviant.<sup>159</sup> Becker identifies labellers as ‘moral entrepreneurs’. This power may not, however, be held only by those who possess scientific or other knowledge (as envisaged, for example, by Foucault, see above), but also, for example, by the media.<sup>160</sup> The motivation for media constructions of deviance may be political. however. the sensationalism provided by stories of deviance also plays an important (economic) role.<sup>161</sup> However, these theories fail to account for *why* something is identified as deviant, the role of norms in the notion of deviance and its effect on wider society.

An understanding of deviance in relation to this thesis must incorporate the notion of norms, as it is the dualistic construction of conformity versus non-conformity that is played out in the courtroom. This dualism is perhaps inevitable in the adversarial system as the very existence of a legal norm renders those who do not measure up to it aberrations. Their different behaviour or subjectivity challenges the validity of the norm, but at the same time creates a wider opportunity for it to be reinforced. Through the presentation of aberrations as deviance they are compared unfavourably to the norm, which is thereby shored up as ‘superior’. The notion of power is crucial in understanding this construction of deviance. Deviance, as a construct, is behaviour that is selected and identified as such. Knowledge, around which notions of deviance can be determined, is collected in the form of, what Foucault calls, bio-power.<sup>162</sup> Bio-power is, for example, statistical information about the population including births and deaths or, scientific knowledge about health and well-being. Bio-power is used in the determination of what is ‘normal’ or ‘good’. The status of this knowledge as ‘scientific’ renders the discourses that circulate norms powerful; they are regarded as speaking the ‘truth’.<sup>163</sup> Thus, aberrations from these norms can be condemned as dangerous, harmful and deviant. Law is one of these powerful discourses that appear to speak the truth: in law ‘Dominant narratives are not called stories, they are called ‘reality’’.<sup>164</sup> In the

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<sup>159</sup> H Becker ‘*Labelling Theory Reconsidered*’ In P Rock and M McIntosh (Eds) ‘*Deviance and Social Control*’ London, Tavistock (1974).

<sup>160</sup> S Cohen ‘*Folk Devils and Moral Panics*’ Oxford (1980).

<sup>161</sup> J Young ‘*The role of the politic as amplifiers of deviancy, negotiators of reality and translators of fantasy*’ In S Cohen (Ed) ‘*Images of Deviance*’ Penguin Books (1982).

<sup>162</sup> Supra No. 14 also see See Rabinow ‘*The Foucault Reader*’ London, Penguin (1991) ‘*Introduction*’ and P Hillyard and S Watson ‘Postmodern Social Policy: a contradiction in terms?’ (1996) *Journal of Social Policy*, 25,3, p327.

<sup>163</sup> See P Hillyard and S Watson ‘Postmodern Social Policy: a contradiction in terms?’ (1996) *Journal of Social Policy*, 25,3, p326.

<sup>164</sup> K MacKinnon ‘*Law’s Stories as Reality and Politics*’ in P Brooks and P Gewirtz ‘*Law’s Stories: narrative and rhetoric in the law*’ New Haven, Yale University Press (1996) p235.



context of the trials of Myra Hindley and Rose West the truth concerned was the association of femaleness and femininity. Within the courtroom issues of femininity were framed within the discourses law had produced, giving rise to adversarial battles between good and bad (deviant) femininity.

## **Deviant Women**

There are two ‘types’ of female deviance that are especially important for the purposes of this thesis. They can be broadly described as ‘female offending’ and ‘sexually active/aggressive women’. As noted above, both female criminality and female sexual aggression are perceived to be deviant. Crime, being predominantly a public male activity, is not something women (should) do. Prostitutes (as examined above) provide an example of ‘female sexual deviants’. In the past they have been identified by biological positivist accounts of criminality as physically identifiable as criminals, sharing many of the same ‘physical’ characteristics as male criminals.<sup>165</sup> They continue to be regarded as sexually deviant today and are subject to legal controls which effectively criminalise their commercial sexual activities. Similarly, a recent target for societal and legal demonisation have been so-called girl gangs. Street gangs, which have been traditionally regarded as a male phenomenon, are now appearing as examples of violent, deviant femininity which have (apparently) arisen as a consequence of the emancipation of women and their increasing presence in the public realm.<sup>166</sup> Their deviance is constructed in part by newspaper campaigns that have focused on single incidents, using them as examples of the (supposedly) rising levels of dangerous femininity.<sup>167</sup>

The phenomena of the woman as a single mother also provides a graphic illustration of the construction of female deviance. The single mothers of populist discourse are women whose errant sexuality is a clear sign of their deviant status. They have been described as a ‘spreading disease’,<sup>168</sup> an expression that describes their increasing number, but is also filled with connotations of dirty sex. As single mothers women are

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<sup>165</sup> C Lombroso *‘Crime, Its Causes and Remedies’* Heinemann, London (1913).

<sup>166</sup> M Chesney Lind *‘The Female Offender’* Sage: London (1997) Ch 3, See also J Messerschmidt *‘Crime as Structured Action: gender, race, class and crime in the making’* Thousand Oaks, Sage (1997) Ch 3, A Campbell *‘Girls in the Gang’* Cambridge, Blackwell (1991).

<sup>167</sup> Ibid.



frequently subject to regulation by the criminal law through laws governing benefit fraud. Benefit fraud by single mothers who failed to declare a domestic/sexual relationship was in the 1980s the third most prevalent type of benefit fraud.<sup>169</sup> However, the very notion of this type of fraud rested upon the notion that women should be financially reliant on the men they form sexual relationships with.<sup>170</sup> None the less, constructions of deviance began to surround these cases and women were portrayed as scroungers and criminals. This construction of the single mother facilitated the operations of 'Special Claims Control Units', which intimidated and threatened women into surrendering their (often legitimate) right to claim.<sup>171</sup> Today single mothers who refuse to release the name of a child's father for fear of violence are still subjected to control through the benefit system, receiving a 40% cut in their benefits.<sup>172</sup> This and other forms of legal control that effect single mothers have been described as the criminalisation of poverty.<sup>173</sup>

Furthermore, single mothers are regarded as producers of criminality as their uncontrolled children become criminals in their own right. It is the absence of the male father figure that has rendered single parenthood a 'concern'. The fathers' absence is not only regarded as causative of juvenile delinquency, but also as a threat to the traditional family unit.<sup>174</sup> Criminality, it is assumed, springs from the learned dependence on welfare, the evident shirking of moral values in a single parent family and the absence of male, disciplinary role models.<sup>175</sup> Following the death of James Bulger, debates surrounding juvenile justice were flooded with concerns about single parenthood and decaying moral standards.<sup>176</sup> The combination of these two images has produced the construction of the single mother as 'probably the most evil product of our time'.<sup>177</sup>

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<sup>168</sup> C Murray 'The Emerging British Underclass' IEA: London (1990) Ch 1.

<sup>169</sup> D Cook 'Rich Law, Poor Law: different responses to tax and supplementary benefit fraud' OUP Oxford (1989) Ch 4.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> N Lopez-Jones 'Single Mothers and the New Poor Law' *NLJ* April 28 (2000) 602.

<sup>173</sup> P Carlen 'Women, Crime and Poverty' also see, for example, C Pantazis and D Gordon 'Television Licence Evasion and the Criminalisation of Female Poverty' *The Howard Journal* (1997) 36, 2, 179.

<sup>174</sup> C Murray 'The Emerging British Underclass' IEA: London (1990) Ch 1.

<sup>175</sup> For a full analysis see A Young 'Imagining Crime' London: Sage (1996) Ch 4.

<sup>176</sup> A Worrall 'Governing Bad Girls' in J Bridgeman and D Monk (Eds) 'Feminist Perspectives on Child Law' London, Cavendish (2000).

<sup>177</sup> Dr Rhodes-Boyson: Conservative Conference 1986.



It is evident from this brief examination of contemporary examples of female deviance that sex and violence play an important role in the construction of the deviant woman. This contrasts sharply with appropriate femininity, which is constructed around domesticity, maternal caring and chastity.

### **Criminal Law and Criminology**

Unlike other areas of law whose function is predominantly dispute resolution and societal regulation, the criminal law is by its very nature prescriptive, purportedly embodying and seeking to shape agreed notions of right and wrong. Crime's challenge to the social order legitimates law's intervention and condemnation of offenders. In fact, the emotions engaged in response to crime often demand it.<sup>178</sup> Thus, criminal law provides an uncomplicated means through which to establish norms of behaviour. The common understanding of criminal activity as wrong and, therefore, participants as 'bad', or less deserving than other members of society, allows the criminal law greater freedom in prescribing and regulating behaviour than other areas of law. In addition, in relation to women, the construction of woman as private, domestic and (sexually) passive, by definition excludes her from 'acceptable'<sup>179</sup> participation in criminal activity. Criminals are active not passive, they are public not private, ultimately they are masculine and not feminine. The criminal justice system is no place for a (real) woman and the female offender can, therefore, arguably, justifiably be differently treated by the criminal justice system, having strayed from both femininity and legality and thus into the male domain of criminality; she is doubly deviant.

Female offenders are, therefore, especially problematic as they challenge traditional conceptions of woman as caring, private, domestic and passive. As a consequence, criminal law responses to female offending are twofold. First, it constructs methods of dealing with and understanding their criminality that rationalise their behaviour in relation to traditional conceptions of womanhood. Second, those women who can no

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<sup>178</sup> A Young *'Imagining Crime'* Sage London (1996) p4-6.

<sup>179</sup> Women's criminality is innately incongruous with femininity, whereas men can be law-abiding and criminal without the issue of gender being raised: A Young *'Imagining Crime'* London: Sage (1996) p42. The acceptability of male offending and female offending will be explored below.



longer be constructed as feminine are classified as deviant. Thus, women are conceived as either angels or whores.<sup>180</sup>

## Criminology

Until relatively recently the silence of criminology with respect to female offenders affirmed the implicit assumption that by nature women are not criminal, but are consumed by motherhood and caring, and are passive.<sup>181</sup> This implicit assumption has been born out in the method adopted by traditional criminology, which has, for example, frequently included only boys in its study samples.<sup>182</sup> Such an approach inevitably gives rise to theories associating 'masculinity' or maleness and crime; both traditional 'strain theory'<sup>183</sup> and 'masculinity theory'<sup>184</sup> do this. For example,<sup>185</sup> strain theory regarded the causes of offending as being associated with the inaccessibility of middle-class values and goals to working class boys and men. The failure to include the female offender within the theory arose from a number of assumptions. The assumption that the 'unachievable goals' were traditionally masculine objectives such as money, ambition, achievement and autonomy restricted the theory to dealing with male offending. Also, the assumption that crime was a male activity restricted their theorising to including only masculine objectives. Perhaps most importantly, the theory assumed that only men were ambitious and, therefore, suffered frustration. Similarly masculinity theory has associated crime and masculine characteristics, regarding crime as embodying traditionally male values, such as daring and material gain and, therefore, participation in crime as an expression of masculinity.<sup>186</sup>

Those theories that did allude to woman's offending over-emphasised the number women who offended, claiming that women's crime was hidden due to their greater ability to deceive. Lombroso and Ferrero<sup>187</sup> in their studies of the skulls of offenders

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<sup>180</sup> Dobash, Dobash and Noaks 'Gender and Crime' Cardiff, University of Wales Press (1995) p118.

<sup>181</sup> A Young 'Imagining Crime' Sage London (1996) Ch 1.

<sup>182</sup> See M Chesney Lind 'The Female Offender' Sage, London (1997) Ch 2.

<sup>183</sup> For example A Cohen 'Delinquency in Boys: the culture of the gang' New York: Free Press (1955)

<sup>184</sup> A Cohen 'Delinquency in Boys: the culture of the gang' New York: Free Press (1955).

<sup>185</sup> For a discussion of other examples such as 'control theory and labelling theory see N Naffine 'Female Crime: the construction of women in criminology' Sydney, Allen and Unwin (1987) Ch.5 & 6.

<sup>186</sup> N Naffine 'Female Crime: the construction of women in criminology' Sydney, Allen and Unwin (1987) Ch. 4.

<sup>187</sup> C Lombroso and W Ferrero 'The Female Offender' T Fisher, Unwin, London (1895).



claimed that, unlike male criminals, female offenders appeared 'remarkably normal'. This apparently indicated their ability to dissimilate and dissemble, to hide behind normality. They did note, however, that female offenders were masculine, less maternal and more sexual than 'ordinary women'.<sup>188</sup> This trend of defeminising the female offender has continued;<sup>189</sup> for example, in 1956 the Massachusetts Parole Board described the female offender as 'lumpish, plain looking and often having skin diseases'.<sup>190</sup>

The work of Pollack<sup>191</sup> similarly dealt in stereotypes. However, he perceived the female criminal, not as masculine, but as embodying all the worst 'female' characteristics (deviant femininity), for example deceit and deviousness, and as exploiting both their position in the home and men in order to conceal their crimes, which he believed were grossly underestimated. Like the theories that regarded female offenders as masculine, aggressive and sexual this theory regarded women in dualities of good and bad, of normal and abnormal.

Both the silence (assumed passivity) and demonisation approaches to female offending evident in traditional criminology demanded a feminist response. Initially, like feminist action in other areas of law, the response was to include women in the pre-existing categories, or in this case, theories. The 1960s and 70s saw the inclusion of women in strain and masculinity theory. Strain theory applied the principle of frustration to women, looking at for example obstacles to maintaining positive relationships and marriage.<sup>192</sup> Masculinity theory sought to ascertain whether female offenders were less feminine and thus exhibited more masculine characteristics than non-offending women.<sup>193</sup>

Recent feminist analyses of traditional criminology have revealed that women's offending has been explained in biologist terms, construing offending primarily in terms

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<sup>188</sup> For a feminist analysis of Lombroso see F Heidensohn : *'Women and Crime'* Basingstoke, MacMillan (1996) Ch.6 and A Young *'Imagining Crime'* London: Sage (1996) Ch 2.

<sup>189</sup> For example in the work of W Thomas *'The Unadjusted Girl'* Little, Brown, Boston (1923)

<sup>190</sup> K Sullivan *'Girls Who Go Wrong'* Gollancz, London (1956) p101.

<sup>191</sup> O Pollack *'The Criminality of Women'* A.S.Barnes, New York (1961).

<sup>192</sup> R Morris 'Female Delinquency and Relational Problems' *Social Forces* (1964) 43, p82.

<sup>193</sup> See C Widom 'Female Offenders: three assumptions about self-esteem, sex role identity and feminism' *Criminal Justice and Behaviour* (1979) 6, 5, p356, W Thornton and J James 'Masculinity and Delinquency Revisited' *British Journal of Criminology* (1979) 19, 3, p225.



of biological composition and thus regarding women as passive to the demands of their bodies. This approach denies that the dualisms of good and bad femininity are constructions, instead regarding the causes of criminality as related to, for example, women's reproductive systems, whether they are pubescent, pre-menstrual, pregnant, lactating<sup>194</sup> or menopausal. Women, through this approach are perceived to be irrational, unstable and emotional as a consequence of their hormonal make-up.<sup>195</sup> Alternatively, if offending cannot be explained through its association with quirks of the reproductive system, a woman may be perceived as misled by her emotions having become involved with crime through a man, typically receiving stolen goods or assisting or harbouring him.<sup>196</sup> The key to this understanding of offending is that women remain passive, subject to the demands of their bodies or to men and, most importantly, feminine. In retaining the femininity of women's offending their actions do not challenge the constructed notion of femininity, on the contrary, they can be explained by it.

Recent feminist work has unpacked traditional criminology's attempts to explain women's offending and has revealed how explanations are grounded in current constructions of femininity. For example, whilst strain theory explains delinquency and offending by men in terms of their inability to achieve middle-class material goals (noted above), it perceives the frustration associated with obstacles to positive relationships as causative of offending by women, associating, for example, poor grooming by women with poor relationships and thus delinquency.<sup>197</sup> This perception of, or explanation for, female offending is grounded in traditional femininity's claim to the central role of relationships in the lives of women, particularly relationships with men, as is evident in women's construction as domestic creatures. Such an approach rests upon a stereotypical, often ill-informed, perception of a woman as incomplete without the companionship of a man and wanting of all positive (male) characteristics such as ambition and autonomy.<sup>198</sup>

<sup>194</sup> As illustrated by the Infanticide Act 1938.

<sup>195</sup> For example see the work of Pollack (1961) *ibid*. One manifestation of this medicalisation of women's offending is that in the USA, for example, whilst the number of women who are incarcerated in detention centres has fallen, the number detained in private psychiatric hospitals increased fourfold between 1980 and 1984: M Chesney Lind *The Female Offender* London: Sage (1997), p84.

<sup>196</sup> See N Naffine *Female Crime: the construction of women in criminology* Sydney, Allen and Unwin (1987) p49.

<sup>197</sup> R Morris 'Female Delinquency and Relational Problems' *Social Forces* (1964) 43, p82.

<sup>198</sup> See A Cohen *Delinquency in Boys: the culture of the gang* New York, Free Press (1955).



Thus, according to both the relationship and biology approaches, women are placed in gender-based categories and their behaviour is excused: it is claimed she didn't mean it; she didn't really do it; she did it for love; it was an irrational and temporary aberration.<sup>199</sup> This minimisation or excusing of women's offending has led to claims that women are treated with chivalry by the criminal justice process and that they benefit as a consequence.<sup>200</sup>

An alternative approach to women's offending that has emerged as a consequence of feminist analyses of traditional criminology is known as 'social control theory'.<sup>201</sup> 'Social control theory' attempts to gain an understanding of not why women offend, but why women offend so little. It looks to the constraints on women's lives, their domestic and childcare duties and their lack of exposure to the public realm and consequently their lack of association with other criminals, to explain the generally low rates of female offending.<sup>202</sup> However, this theory also leads to a dualistic perception of women; those who are feminine (domestic, mothers/carers) do not offend,<sup>203</sup> those who do offend have failed to conform to the norm of femininity. Thus, social control theory can be exploited to justify halting the process of female emancipation which has been blamed for the rise in female crime. Furthermore, it is vulnerable to the same criticism as other theories that have attempted to account for women's offending. That is that explanations for male and female crime are located firmly within the dualities of male and female values and characteristics, failing to account for or challenge the fact that feminine characteristics are norms that have been determined by men.<sup>204</sup>

There has been little attempt to explain women's or men's crime without reference to the preconceived and stereotypical notions of gender, behaviour and values. Women's crime is explained in terms of passivity and traditionally feminine characteristics and values,

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<sup>199</sup> S Box 'Power, Crime and Mystification' New York and London: Tavistock Publications (1983) p170.

<sup>200</sup> Pollack 'The Criminality of Women', Connecticut: Greenwood (1950), W Reckless and B Kay 'The Female Offender', Washington DC; Government Printing Office (1967).

<sup>201</sup> This is the specific application of 'Control theory' (eg T Hirschi 'Causes of Delinquency' Californian: University of California Press (1969)) to women eg see J Hagan, J Simpson and A Gellis 'The Sexual Stratification of Social Control' *The British Journal of Sociology* (1979) 30, 25.

<sup>202</sup> See S Box 'Power, Crime and Mystification' New York and London: Tavistock Publications (1983) p182.

<sup>203</sup> Sex Role Theory directly associates femininity with non-offending: A Oakley 'Sex, Gender and Society' New York: Harper and Row (1972).

<sup>204</sup> F Heidensohn 'Models of Justice: portia or persephone? some thoughts on equality, fairness and gender in the field of criminal justice' *International Journal of the Sociology of Law* (1986), 14, 287.



for example reproduction and relationships, and male crime is explained in terms of material gain and aggression. Crime itself is constructed as a masculine activity,<sup>205</sup> conducted in the public realm and encapsulating masculine characteristics and thereby attracting males (and very occasionally masculine women).<sup>206</sup> The exceptions to this construction are the few traditionally female crimes, such as shop-lifting or receiving stolen goods, which are associated with the private, domestic world (shopping) and are easily explained within the existing confines of femininity. The few women who do participate in crime must either be 'excused' through passive femininity, or are rendered deviant. Consequently, women's crime is explicable within the concept of sexual difference,<sup>207</sup> and within the dualism of femininity / deviance.<sup>208</sup> This dualistic approach mirrors that embodied in the substantive law; women are either assumed to be passive (in relation to their biology), or are regarded as deviant and requiring punishment.

Postmodern feminist criminology examines attempts to include women within criminological theory. It exposes the failure to address the implicit assumptions about women's nature that render women participating in criminal activity 'abnormal' or deviant. It criticises criminology's failure to look beyond gendered constructions of masculinity and femininity.<sup>209</sup> It deconstructs criminology revealing the assumptions about woman's nature that underlie the explanations for her offending. Postmodern feminist work seeks to gain a full understanding of women's offending, looking at the context of offending, reporting and processing. By contextualising and re-investigating offending the narrow and uninformed assumptions upon which traditional criminology rests are exposed. For example, a contextual examination of juvenile arrest rates reveals that girls are more likely to be reported to the police by their parents than boys exhibiting similar behaviour. This reveals, first, that responses to female delinquency are harsher due to the sexual double standard that is most likely to condemn girls' sexuality whilst condoning or even praising boys' (hetero)sexuality. Secondly it reveals that rates of delinquency in girls are inflated.<sup>210</sup> In addition to exposing the flaws and

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<sup>205</sup> Masculinity Theory: in F Heidensohn : *'Women and Crime'* Basingstoke, MacMillan (1996) Ch. 6

<sup>206</sup> See Parsons *'Essays in Sociological Theory'* Glencoe Illinois: Free Press (1954).

<sup>207</sup> A Young *'Imagining Crime'* Sage; London (1996).

<sup>208</sup> The bifurcation of female offenders continues through the use of either restorative justice (for feminine, redeemable women or girls) or just deserts (for deviant women) approaches to punishment: A Worrall *'Governing Bad Girls'* in J Bridgeman and D Monk (Eds) *'Feminist Perspectives on Child Law'* London, Cavendish (2000).

<sup>209</sup> A Young *'Imagining Crime'* Sage: London (1996), Ch 2.

<sup>210</sup> Ibid.



assumptions in traditional criminology, third wave approaches to criminology seek to understand the causes of women's offending by recognising that both the causes and women's responses to them may be unique to women.<sup>211</sup> It then seeks to investigate ways of addressing those causes and ways to help.

### **The Incongruity of Women and the Criminal Justice System**

Thus far an examination of legal postmodern feminism's critique of law in its various forms has revealed first, the nature and substance of the constructions of conforming and non-conforming femininity and second, how female offending is explained through those dualistic constructions. Of crucial importance to this thesis, however, is how constructions of femininity are played out in the criminal justice process, particularly the courtroom.

Because of women's low level of participation in crime and their construction as feminine and thus not criminal, women and the criminal law appear to be largely incongruous. This has led to the emergence of two contradictory arguments. On the one hand women, it is argued, are treated with chivalry by the criminal justice process and its largely male personnel.<sup>212</sup> However, this claim has been successfully attacked by feminist criminologists who have revealed that so-called chivalry is countered by the greater likelihood of women's crime to be reported than men's.<sup>213</sup> Further, findings indicate that chivalry in the criminal justice process is only offered to those women who conform to gender stereotypes<sup>214</sup> and that those who fail to conform to gender roles or whose crimes render them 'deviant' will actually be treated more harshly than men.<sup>215</sup> These findings support the counter argument arising from women's incongruity with the criminal justice system, that they are unjustly treated because of their sex/gender.

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<sup>211</sup> For example, women who are offend are more likely than men to have suffered physical or sexual abuse T Snell and D Morton 'Women in Prison' (Special Report) Washington DC: Bureau of Justice Statistics (1994).

<sup>212</sup> Supra No 200.

<sup>213</sup> N Parisi 'Exploring Female Crime Patterns' In N Rafter, and E Stanko (Eds) 'Judge, Lawyer, Victim, Thief: women and gender roles in criminal justice' Boston, Northeastern University Press (1982) and M Chesney Lind 'The Female Offender' Sage; London (1997) Ch 2.

<sup>214</sup> Farrington and Morris (1983) 'Sex, Sentencing and Reconviction' British Journal of Criminology Vol 23, No 3, p229.

<sup>215</sup> S Box 'Power, Crime and Mystification' Tavistock Publications; New York, London (1983) p173.



There are many examples of injustice arising out of the simple failure of judges to see beyond their male perspective and to understand women's experiences as victims and as perpetrators.

The language of the courtroom both reflects and reinforces the prevailing picture of social order. It contains and communicates the attitudes and assumptions of those involved in the construction of justice.<sup>216</sup>

This goes some way to illustrating and explaining the criminal law's assumed exclusion of women from the criminal process. As victims, women's suffering is often undervalued or misunderstood, particularly when the crime is rape, something which is rarely and differently experienced by a man. Decisions include accusations of contributory negligence for walking alone at night, the minimalisation of the importance and impact of rape by family members, and the reduction of sentences on the basis of the victims 'remarkable recovery'.<sup>217</sup> As perpetrators women are often judged with reference to the personal and often misguided beliefs and preconceived ideas of the individual judges. Pickles J, for example, imprisoned a pregnant woman for allowing two friends to pass through her till without paying as an example to women who in the future may be tempted to become pregnant in order to avoid custodial sentences.<sup>218</sup>

The content and the processes of the criminal law and criminal justice system are as telling as the decisions themselves as they reflect the anticipated absence of women offenders. It is no coincidence, argues Kennedy,<sup>219</sup> that such a large proportion of miscarriages of justice, the convictions of which flow from confession evidence, involve women, who are often overpowered and intimidated by the investigation process. The substance of defences to murder illustrates a similar unsuitability for women having been constructed entirely around the experiences of men. For example, provocation defined by men as an immediate and sudden loss of control is experienced by (female) victims of domestic violence as a slow and cumulative process. Thus, whilst the cause of their action may be years of physical and emotional abuse the traditional defence of provocation is unsuitable for these women whilst men have

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<sup>216</sup> M Eaton *'Justice for Women? family, court and social control'* Oxford, OUP (1986) p43.

<sup>217</sup> H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p.121.

<sup>218</sup> Ibid p72.

<sup>219</sup> Ibid Ch.9.



successfully pleaded the defence, for example, in the case of real or suspected infidelity.<sup>220</sup> The criminal law has begun to adapt<sup>221</sup> so that in the future the history of violence will be relevant in assessing the gravity of the provocation and law will, to some extent, reflect the experience of women.<sup>222</sup>

In the light of the pervasiveness of the norm of 'femininity' in the legal system and the incongruity of femininity and criminality it is perhaps unsurprising that female offenders are judged as women and not merely as offenders. In the legal process, as in the substantive law and criminology, women are subject to construction as either passive or deviant.

The criminal process contrives at many levels to present female offenders as conforming to the traditional conception of passive femininity, thus minimising the challenge they pose to that construction. Because women are perceived as subject to the demands of their bodies and as irrational, their action is not regarded as a rational choice (as men's is),<sup>223</sup> therefore explanations are sought from other areas of their lives. As a consequence, the persona of the woman is far more likely to be unearthed than that of a man. The exposure of women's private lives in the form of conformity may as result in female offenders being treated with leniency. This has been described as the sexual contract,<sup>224</sup> whereby women are presented in terms of traditional femininity in return for leniency. The sexual contract requires offenders to enter a process whereby their lawyers conspire to present them as feminine, using their domesticity as wives and mothers.<sup>225</sup> This process may be mirrored in pre-sentencing reports. Reports revolve around the examination of the home environment of the female offender and the assessment is made in terms of her role as wife, mother and homemaker. A good woman, loyal loving, compliant, altruistic, mother and carer is treated favourably by the

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<sup>220</sup> Michael McKeon (1998) Birmingham Post, 15<sup>th</sup> Dec.

<sup>221</sup> Luc Thiet Thuan v R (1997) AC. 131 (Privy Council), R v Morhall (1996) 1 AC. 90 (House of Lords), although these cases have subsequently been weakened by R v Smith Crim LR (2000) 1004

<sup>222</sup> However, these changes will not resolve other problems faced by battered women who kill, for example the requirement of suddenness is inconsistent with women's modus operandi which often involves a time lag between violent incidents and, for example, the fetching of a weapon. See S Edwards : *'Sex and Gender in the Legal Process'* London, Blackstone Press (1996)

<sup>223</sup> H. Allen *'Justice Unbalanced: gender, psychiatry and judicial decisions'* Oxford, OUP (1987) Ch.3

<sup>224</sup> Pateman *'The Disorder of Women: women, love and the sense of justice'* Ethics (1980) 91, p20.

<sup>225</sup> A Worrall *'Offending Women'* London, Routledge (1990) Ch. 5.



court<sup>226</sup> and presentation of the woman as conventional in a report provides a basis on which a plea for mitigation in sentencing can be made.<sup>227</sup>

Alternatively, women's offending may be explained through pathology. Feminist criminologists<sup>228</sup> have identified the tendency for the criminal process to remove 'agency' from female offenders. Either through the construction of women as sick and the illness as the consequence of circumstances beyond their control, or their reproductive system, or by explaining their behaviour with reference to their domestic situations. Female offenders actions are 'excused' or explained. This too may be reflected in the pre-sentence report, which frequently recommends 'treatment', usually via some form of counselling embodied in a probation order.<sup>229</sup> It is often the response of the criminal justice system in cases involving atypical female crimes (crimes of sex or violence) to assign women the status of sickness. The assumption that women do not act rationally or act without agency facilitates this process as 'other reasons' are sought for their offending such as inner emotional problems.<sup>230</sup> This is a particularly attractive option as pathology is traditionally regarded as 'feminine',<sup>231</sup> and female offenders are regarded as harmless and the causes of their offending perceived as suitable for, for example, counselling, psychiatry or medication.<sup>232</sup> These assumptions facilitate yet another way in which women are differentially treated by the criminal justice system; they are twice as likely to receive psychiatric disposal than men.<sup>233</sup> The elasticity of medical terms such as 'personality disorder' enables law to brand a wide range of women who commit crimes of varying severity (from shoplifting to murder) as 'sick'. This enables women whose offending behaviour illustrates non-conformity to be constructed as passive and, therefore, 'feminine'.

As a result the criminal process, like other areas of law, maintains the image of women as feminine (private, domestic and commanded by nature) despite their participation in

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<sup>226</sup> N Naffine 'Law and the Sexes' Sydney, Allen and Unwin (1990) Ch. 7.

<sup>227</sup> See S Edwards : 'Women on Trial: a study of the female suspect, defendant and offender in the criminal law and criminal justice process' Manchester, Manchester University Press (1984) Ch. 6

<sup>228</sup> Such as H. Allen 'Justice Unbalanced: gender, psychiatry and judicial decisions' Oxford, OUP (1987).

<sup>229</sup> Ibid p.5-7.

<sup>230</sup> Ibid Ch.2.

<sup>231</sup> See A Worrall 'Offending Women' London, Routledge (1990).

<sup>232</sup> H. Allen 'Justice Unbalanced: gender, psychiatry and judicial decisions' Oxford, OUP (1987) Ch.6.

<sup>233</sup> Ibid Ch.1.



potentially masculine activity. By re-defining the individual offender in traditional feminine terms, 'appropriate femininity'<sup>234</sup> can be prescribed as the solution to her problems. The cost of conformity to women individually may be low, however, the cumulative effect of this process is the constitution of a model of appropriate femininity that is used in the categorisation of others as deviant.<sup>235</sup> Those women whose conduct renders them deviant and/or who refuse to concede to the sexual contract, become problematic for law as they reject the gendered role law and other discourses have assigned them. They represent challenges to law's claim that femininity and femaleness are one-and-the-same.

Whilst crime may be generally incongruous with notions of good femininity and the treatment and perception of offenders maintains their femininity, certain types of crimes or offending behaviour are regarded as atypical crimes. They are incongruous with the expected, gendered behaviour of women and so are rendered unfeminine. These crimes may preclude women from feminine reconstruction. It may even be that this incongruity leads to women being more likely to be criminalized for violent acts, as for example girls' fights become the subject of police responses, but not boys'.<sup>236</sup> In particular, women committing 'male' crimes may evade classification as sick as such categories are constructed around traditionally female illnesses such as depression, anxiety and neurosis that do not generally fit violent acts. The female offender's rejection of femininity through the commission of atypical crimes is also a refusal to concede to construction as needy, or appropriate for re-moulding into a 'woman' via psychiatric disposal.

The clearest examples of atypical crimes are crimes of violence or of sexual motive (see above). Examinations of violent crimes involving women have revealed that hardly ever is the violence considered legitimate.<sup>237</sup> Similarly, female victims who use violence

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<sup>234</sup> A Worrall *'Offending Women'* London, Routledge (1990).

<sup>235</sup> C Smart *'Women, Crime and Criminology'* Routledge and Kegan Paul, London (1997) pp110-111.

<sup>236</sup> A Worrall *'Governing Bad Girls'* in J Bridgeman and D Monk (Eds) *'Feminist Perspectives on Child Law'* London, Cavendish (2000).

<sup>237</sup> A study of 63 cases tried at Manchester Crown Court found that the use of violence by women was never considered as legitimate (S Edwards : *'Women on Trial: a study of the female suspect, defendant and offender in the criminal law and criminal justice process'* Manchester, Manchester University Press (1984) p178) A similar study found that 17 battered women who killed their abusers were treated as cold blooded murderers (W Bacon and R Lansdowne *'Women Who Kill Their Husbands: the battered wife on trial'* in C O'Donnell and J Craney *'Family Violence in Australia'* Melbourne (1982)).



against their attackers, whilst defending themselves from harm, may find that their behaviour is condemned in the courtroom.<sup>238</sup> The incongruity of women and violence arises from the association of violence and macho, tough, aggressive masculinity. As a consequence female violence can only be conceptualised as ‘unnatural’ and deviant.<sup>239</sup> Instances of female violence are lower than male violence.<sup>240</sup> However, accounts of violence by women are hyped and their behaviour contrasted with traditional constructs of femininity to demonise them.<sup>241</sup> As a consequence of the classification of certain crimes as ‘male crimes’, women using violence or having sexual motives will, by the very nature of their offence, risk classification as ‘deviant’. However, feminist critiques of accounts of women’s violence note their failure to move beyond an account of battered women in the initial stages of the criminal justice system, and that failure to expand the commentary fails to address the wider range of women’s violence and why those offences are committed.<sup>242</sup> What is known is that when women are imprisoned imprisonment provides law with the means of normalisation. Women are ‘rehabilitated’ into femininity through the activities they are encouraged to take part in, such as sewing, cooking and washing.<sup>243</sup>

### Conclusion

The literature reviewed in this chapter has identified the trilogy of domesticity, sexuality and maternity that constitutes the legal construction of femininity. Postmodern feminist criminologists have gone on to reveal that this construction/understanding of femininity has also been embodied and reproduced by the substantive criminal law and criminological discourses that seek to explain women’s offending. It is, therefore, inevitable that feminist work has also unveiled the use of constructions of femininity in the courtroom.

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<sup>238</sup> *R v Maguire* The Times 21 June (1981).

<sup>239</sup> Dobash, Dobash and Noaks ‘*Women and Crime*’ University of Wales Press (1995) p122.

<sup>240</sup> Although it has been argued that violence by women is rising, this is within the context of a general rise in violent crime, within this general increase women’s violence remains at the same low proportion: M Chesney Lind ‘*The Female Offender*’ London: Sage (1997) Ch 3 and Ch 5.

<sup>241</sup> Ibid Ch 3.

<sup>242</sup> Dobash, Dobash and Noaks ‘*Women and Crime*’ Cardiff, University of Wales Press (1995) p116.

<sup>243</sup> S Edwards : ‘*Women on Trial: a study of the female suspect, defendant and offender in the criminal law and criminal justice process*’ Manchester, Manchester University Press (1984) p.215.



The use of gender stereotypes in the courtroom is perhaps most evident in the case of indictable offences which give rise to the full spectacle of a criminal trial. Research has shown that the extent to which the individual offender fulfils her feminine role is often scrutinised during the trial and may prove important in deciding which of the two opposing discourses of conforming / non-conformity is applied to the offender. Thus, many feminist writers have argued that the behaviour or image of the individual woman in the dock is as important as any other factor in the trial:

One of the factors which undoubtedly effects the outcome of murder trials is the persona of the woman in the dock. It is my view that this is what really determines the outcome. Women who conform to the conventional image of the cowed victim fare better than those who come to trial angry that they are being blamed for what ultimately took place.<sup>244</sup>

Within the notion of conformity there is inscribed a system of gender differentiation which enables defendants to be judged for their identity as much as or instead of the crime they may have committed. To that extent, the question must be asked whether defendants are found guilty of the crime charged or of the betrayal of their gender.<sup>245</sup>

Most postmodern feminist criminological research that examines the construction of femininity in the courtroom has however concentrated on the final stages of the court process, such as pre-sentence reports,<sup>246</sup> sentencing decisions<sup>247</sup> (relating to both the length and nature of sentences) and judicial judgements.<sup>248</sup> Work examining the main body of the trial (opening and closing speeches and testimonies) has been largely confined to rape trials. This large body of research has examined the attack waged on female victims of rape by defence counsel. It has revealed that attacks on the character of the victim are predominantly centred on destroying the credibility and character of victims by attacking their sexual propriety and implying that women are prone to invent

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<sup>244</sup> H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p.215.

<sup>245</sup> A Young *'Imagining Crime'* Sage: London (1996) p43.

<sup>246</sup> S Edwards : *'Women on Trial: a study of the female suspect, defendant and offender in the criminal law and criminal justice process'* Manchester, Manchester University Press (1984) Ch. 6.

<sup>247</sup> H. Allen *'Justice Unbalanced: gender, psychiatry and judicial decisions'* Oxford, OUP (1987).

<sup>248</sup> D. Nicolson in *'Telling Tales: Gender discrimination, gender construction and battered women who kill'* : (1995) *FLS* Vol 3, No 2, 18.



rape scenarios, both of which draw on traditional constructions of femininity (above).<sup>249</sup> Work which has attempted to unveil the use of constructions of femininity in the main body of the trial outside the area of rape are rare. One such piece, which examines the murder trial of Susan Christie, revealed that femininity was used in the construction and counter construction of the defendant, Susan Christie, as villain and victim by the prosecution and defence respectively.<sup>250</sup>

This thesis seeks to address this evident gap in feminist research by examining the construction of cases by defence and prosecution and the judicial summing up in the trials of Rose West and Myra Hindley. The opposing constructions of conformity and non-conformity informed the defence and prosecution cases in the trials of Rose West and Myra Hindley. The transcripts that are examined in this thesis reveal that constructions of femininity examined above permeate the legal system so that not only do they explain women's offending, but they can have a crucial role to play in deciding on guilt or innocence. It is the contention of this thesis that this process has, in part, been exacerbated by feminist work which has 'revealed' the utility of adopting constructions of conformity and non-conformity in the courtroom. Consequently, there is a danger that the use of stereotyping has become prolific in defence and prosecution 'techniques'. This is evident in the different use of gender in the trials of Myra Hindley and Rose West. Myra Hindley's trial took place in the 1960s and therefore predates postmodern feminist criminological analyses of women and the criminal process. Although constructions of conformity and non-conformity are evident in her trial, they do not dominate the process. Constructions appear to be subconscious, they creep unnoticed into the courtroom. This is perhaps because during the 1960s the construction of femininity as passive, domestic and sexually conservative was generally accepted, both inside and outside the courtroom. In the 1990s however, the social construction of woman has been uncovered and revealed, but in the courtroom traditional constructions persist. Further, knowledge about the utility of employing constructions is widespread and they are exploited as a key element of the defence and prosecution cases. Thus, the conforming / non-conforming dichotomy is played out in the trial process. As a

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<sup>249</sup> See for example S Lees '*Ruling Passions: sexual violence, reputation and the law*' Buckingham, OUP (1997) Ch 3, J Temkin 'Prosecuting and Defending Rape: perspectives from the bar' *Journal of Law and Society*, Vol 27, No2, June 2000, 219, J Temkin '*Sexual History Evidence - The Ravishment of section 2*' (1993) *Crim LR*, 3.

<sup>250</sup> C Bell and M Fox 'Telling Stories of Women Who Kill' *Social and Legal Studies* (1996) 471



consequence of the dominance of these constructions, either conscious or subconscious, both women are silenced.<sup>251</sup> Accounts of their behaviour and experience are channelled by the court and their counsel into well known formats of feminine conformity and non-conformity.

Whilst these cases can not be described as 'typical' and, thus, the findings cannot be indiscriminately applied to all cases involving female defendants, they will shed some light on a previously neglected area of research. That is not to say, however, that research has not been done on the trial process, on the contrary there is a wide body of literature on the courtroom process and the construction of cases. That research has, however, been gender-blind.

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<sup>251</sup> A Worrall '*Offending Women*' London, Routledge (1990) p21.



## **The Phenomena of the Courtroom Trial:**

### **Truth and case construction**

Although this thesis inevitably rests heavily on the wide spectrum of available feminist theory and an examination of the criminal justice system, as an analysis of two criminal trials, it is equally dependant on the vast body of work that has looked at the trial process. Specifically, the work must take account of the forces that operate in the courtroom. Thus far, feminist theory and work on the trial and courtroom processes have existed in isolation from each other. The existing feminist literature explored in chapter two does address the treatment of women in the criminal justice system, however, it has not addressed the specifics of the court system and how they treat women. It is rare to find work by feminist scholars that addresses gender within the context of case construction and visa versa. This thesis relies on both disciplines to gain an understanding of the cases of Rose West and Myra Hindley. Having examined relevant feminist theory in the previous chapter, this chapter goes on to summarise the body of work on case construction and attempts to offer an understanding of the forces at work in the courtroom, with particular reference to the crown court trial. Finally, it argues that scholars have failed to take specific account of the role of gender in the process of case construction. This chapter, therefore, provides a basis for the remainder of the thesis which looks at the function or use of gender within the context of the identified processes of case construction.

### **Constructing the Case for the Prosecution<sup>1</sup>**

Case construction begins with the police investigation of the crime. There have been a number of pieces of work that examine the pre-trial police investigation, it being the

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<sup>1</sup> A Sanders 'Constructing the Case for the Prosecution' Journal of Law and Society, Vol 12, No 2, Summer (1987), 229.



first part of the response of the criminal justice system.<sup>2</sup> Indeed, Andrew Sanders argues that the investigation forms the most important stage in cases that are later won in the courtroom. Thus, a successful prosecution case is dependent on case construction at the point of investigation.<sup>3</sup> The veracity of the evidence gathered during the investigation is key both in the trial and to its outcome.

The evidence gathered during the investigation forms the case for the prosecution. Consequently, the prosecution begins its role in the proceedings with an advantage, having had an investigation conducted on its behalf. Not so the defence. Furthermore, the investigation is not a balanced investigation: once a *prima facie* case is established against the accused evidence is gathered not *about* him or her but *against* him or her. Thereafter the case is constructed against the defendant with a view to proving guilt. From this point on, as McBarnet notes, the terms of the debate and the legal framework within which the trial will take place are determined by the prosecution who establish the relevant issues, evidence and charges and have access to all of the evidence and witnesses.<sup>4</sup> Thus, at the very beginning of the process, the criminal justice system is 'adversarial' in nature. Once a suspect is identified the police adopt a role that involves building a case against the defendant and proceed in an adversarial rather than inquisitorial manner.

These points are important to note before commencing a study of the goings on in the courtroom, they form important background knowledge and the prosecution's advantage should not be overlooked. However, the object of the present study is the trial process and so, whilst bearing in mind the balance of evidence in favour of the prosecution (and thereafter in theory equalised by the rules governing the balance and standard of proof in favour of the defendant), the main object of concern here will be the personnel and processes of the courtroom and not the police.

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<sup>2</sup> For example see D McBarnet 'Pre-trial procedures and the Construction of Conviction' In 'The Sociology of Law' P Carlen (Ed) University of Keele, Keele (1976), and 'The Case for the Prosecution' M McConville, A Sanders and R Leng, Routledge, London and New York (1991).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.



## **The Trial as an Arena for Seeking the Truth?**

It is argued, that legal positivism encourages the view that the truth is discoverable and can be elicited when the facts are made known, that truth can be elicited through reason and the application of law to facts in the arena of the trial.<sup>5</sup> This assumption is based upon a particular understanding of the trial: namely, that the judge, the lawyers and the jury are considered neutral and value free.<sup>6</sup> In addition, in this view the pre-trial processes (e.g. the police investigation) that effect the nature of evidence presented are not taken into account. It is the premise of the legal positivists that underlies our belief in law as producer of truth and, therefore, justice.<sup>7</sup> This understanding of the trial process has been long-since questioned and challenged. On a practical level Frank argued, for example, that witnesses are fallible and, therefore, can make mistakes and that those who hear the 'facts' (the jury) are not standardised, they have prejudices which effect their perception of the evidence and decision-making.<sup>8</sup> Legal positivism encounters two further problems. It is argued, for example by postmodernists, that knowledge and truth are partial not absolute; that they do not exist outside of their context but are constructed, in part, by that context. This has been undeniably illustrated by feminist work that has revealed that versions of reality are frequently male versions that reflect male understandings of the world. For example, it can be argued that the understanding of rape as 'penile penetration' embodies the male phallogentric view of the world.<sup>9</sup> This partiality is exacerbated by the nature of the adversarial trial that does not seek the truth, but merely pitches two alternative versions or stories against each other, the evidence being selected on the basis of both evidential rules and what will best serve the 'case' rather than what will come closest to revealing the 'truth'.<sup>10</sup>

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<sup>5</sup> D Nicolson 'Truth Reason and Justice: Epistemology and Politics in Evidence Discourse' MLR Sept (1994) 726.

<sup>6</sup> Ibid.

<sup>7</sup> T Arnold *'The Symbols of Government'* New Haven (1935), Ch 6.

<sup>8</sup> J Frank *'Law and the Modern Mind'* New York, Stevens (1949), Preface.

<sup>9</sup> C Smart *'Feminist Approaches to Criminology or Postmodern Woman meets Atavistic Man'* in L Gelsthorpe and A Morris *'Feminist Perspectives in Criminology'* Oxford, OUP (1990).

<sup>10</sup> See A Sanders 'Constructing the Case for the Prosecution' Journal of Law and Society, Vol 14, No2, Summer (1987), 229.



Judicial fact-finding often operates by way of evidentiary presumptions (sometimes irrebuttable), legal fictions and deliberately tilted allocations of the evidentiary burden ...<sup>11</sup>

Jackson argues that the adversary system can mean that relevant evidence is left unheard, that counter evidence is left undiscovered and that contradictions are left unresolved.<sup>12</sup> As a result:

The reality is that the adversary process of a trial more than leaves the truth mysteriously hidden, covered over by the evasions and half truths of competing contentions.<sup>13</sup>

This difference between the 'trial truth' and the 'real' truth has been explicitly recognised by the judiciary. For example, Judge Roling stated that 'the purpose and result of [the adversarial] ... trial is not the truth, but the trial truth.'<sup>14</sup> Thus, conviction, or trial truth, depends on a legal concept of proof, which is determined by both the decisions of counsel and the legal rules governing the admissibility of evidence. Consequently, a common sense approach, which might conclude the truth unknowable, is considered irrelevant or is ignored.<sup>15</sup>

This is illustrated in the trials of Rose West and Myra Hindley.<sup>16</sup> At the conclusion of each of the trials the observer still does not know what actually happened. Though stories are based on facts that are 'proven'<sup>17</sup> by evidence as part of the trial procedure, the facts presented at any trial represent two alternative versions of truth, and, therefore, are far from objective. In addition, they are shot through with contemporary values and

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<sup>11</sup> H Osnov 'In Legal Remembrance of Judicial Massacre' University of Pennsylvania Law Review Vol 144 No 1 (1995) 463, p674.

<sup>12</sup> J Jackson 'Law's Truth, Lay Truth and Lawyer's Truth: the representation of evidence in adversary trials' Law and Critique, Vol 3, No 1, (1992) 29.

<sup>13</sup> D Pannick '*Judges*' OUP, Oxford (1987), p53.

<sup>14</sup> BVA Roling and A Casse '*The Tokyo Trial and Beyond: reflections of a peacemonger*' Polity Press in Association with Blackwell, Cambridge (1993) p50.

<sup>15</sup> D McBarnet '*Pre-trial Procedures and the Construction of Conviction*' In P Carlen (Ed) '*The Sociology of Law*' University of Keele, Keele (1976).

<sup>16</sup> For example, the prosecution's case is built on an investigation designed to convict rather than seek the truth, as illustrated above.

<sup>17</sup> C Perelman describes proof as 'a demonstration which makes it possible to deduce a proposition.' in '*The Idea of Justice and the Problem of Argument*' Richard Clay and Co Ltd, Suffolk (1963), p98.



morality.<sup>18</sup> Thus, 'facts are not ahistorical and atemporal, but are constructed through the actions of men and the world on each other.'<sup>19</sup>

Yet it is the criminal trial more than the civil case which purports to reveal the truth because of the very high standard of proof by which it operates. Jurors<sup>20</sup> are presented with the facts and are asked reach a conclusion of guilt or innocence. These facts are, however, partial due to police evidence collection methods, case preparation which produces 'lawyers truth', and the fallible nature of witness testimony and the nature of the adversarial system. The jury must then judge and interpret these partial facts. They decide whether or not to believe individual witnesses by judging their credibility, and the versions provided by counsel are believed or not believed, frequently on the basis of whether they are internally consistent or not, or whether they fit (or not) with jurors' general experience and expectations.<sup>21</sup> This process of truth finding is fraught with limitations. Facts may not have been discovered, some may have been excluded either by the rules of evidence or as a tactical measure, they may be twisted by the questioning process or painted with additional meaning by counsel to support or undermine them. None-the-less it is these facts, or this corpus of knowledge that makes up each side's 'case' which is presented in the court and on which juries make their decisions. Jackson argues that as a consequence of these processes this is not truth according to the common understanding of 'truth'. He argues that law is more concerned with dispute resolution and upholding norms of behaviour<sup>22</sup> than determining the 'truth'. However, law does have its own version of truth; facts become truth having passed through law's procedures and 'lay truth' becomes law's truth through legally regulated testimony. Thus, concludes Jackson, trials are about law's truth and lawyers rather than lay truth and do not embody any sense of supposedly abstract truth.<sup>23</sup>

As is already evident, the corpus of knowledge presented in the courtroom may not represent 'the truth' nor will it always include all the relevant facts. Yet this evidence

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<sup>18</sup> D Nicolson 'Truth Reason and Justice: Epistemology and Politics in Evidence Discourse' MRL Sept (1994) 737.

<sup>19</sup> Z Bankowski and G Mungham *'Images of Law'* London, Routledge (1976) p122.

<sup>20</sup> Although it should be noted that the minority of trials are jury trials.

<sup>21</sup> H Garfinkel *'Studies in Ethnomethodology'* Polity Press, Cambridge (1997) Ch 4.

<sup>22</sup> This can be likened to the crime control model of criminal justice, whose purpose is repressing crime and not to discover the truth or protect the rights of the defendant. M McConville and J Baldwin *'Courts, Prosecution and Conviction'* Clarendon Press, Oxford (1981).



will provide a basis from which other information (e.g. a conclusion) may be inferred as ‘ ‘evidence’ is information from which further information is derived or inferred in a variety of contexts for a variety of purposes.’<sup>24</sup> Inferring conclusions involves drawing inferences on the basis of inductive logic and reasoning (e.g. cause and effect). This inductive reasoning involves inducing general propositions from the evidence. Consequently, if all the facts are not available (e.g. there was no eyewitness to a shooting) the jury may be asked by the prosecution or defence to ‘fill in the gaps’<sup>25</sup> as part of the process of reasoning (the defendant was found in possession of the gun, therefore, it is likely he committed the shooting). However, gap filling, or merely the act of drawing inferences to reach conclusions about the truth, may depend on a shared stock of knowledge by the jury (in the case of the shooting the inference may also be dependent upon wider evidence, that the victim was having an affair with the defendants wife and that this is widely regarded as a motive for murder). Thus, the decision depends on what, in their experience, is likely to have happened. This is known as deductive reasoning (making sense of things through existing knowledge).<sup>26</sup>

In some cases the gap that needs to be filled by inference may be bigger than others. The evidence in Myra Hindley’s case was fuller and more conclusive than that in Rose West’s. Rose West’s defence describes this gap during the closing arguments:

He (the prosecution) has tried to take you from one part of the case to the other, one half of the evidence to the other, to forge the link, and he is a bit like ... a mountain guide, and he comes along to you and he says “I will lead you to the path to the top of this mountain and if you follow me we will get to the top together. If we get to the top together you convict Rosemary West.” Unfortunately what happens when Mr Leveson is leading you along that path is that you come to a break in the path, a gap in the path, a void in the path. What he does and what he has done is that he has jumped over the void, and then he is turning round to you from the other side and he is saying to you “jump, it’s quite safe; jump.”<sup>27</sup>

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<sup>23</sup> J Jackson ‘Law’s Truth, Lay Truth and Lawyer’s Truth: the representation of evidence in adversary trials’ *Law and Critique*, Vol 3, No 1, (1992) 29.

<sup>24</sup> W Twining ‘Evidence and Legal Theory’ *MRL* Vol 48, May (1984) No 3, 261.

<sup>25</sup> An extraordinary example of jury inference is provided by the abolition of the right to silence in the Criminal Justice and Public Order Act 1994 ss 34-37.

<sup>26</sup> J Jackson ‘Two Methods of Proof in Criminal Procedure’ *MLR* Vol 51, Sept (1988) No5 p553



In discussing a different case Bronwyn Naylor comments:

In a case like this ... the prosecution depends on persuading a jury the prosecution scenario is believable, that the circumstantial material adds up to proof of guilt, that the projected events and motivations are predictable.<sup>28</sup>

This statement is equally applicable to the West case.

It is this 'gap' in the case of Rose West, and to a much lesser extent in the case of Myra Hindley, that provides the most fertile ground for 'fact construction'. Inferences that the jury are asked to draw are riddled with gender stereotypes. For example, from the basis of Rose West's aggressive and violent (and therefore unfeminine) sexuality the jury are asked to infer her part in murder. In this trial, perhaps because of the lack of direct evidence and/or the more advanced stock of legal knowledge on the effect of good or bad femininity on the outcome of trials, there is heavy use of stereotyping. As the Hindley case was informed by more direct evidence, the need for inference was reduced and so stereotyping played a less prominent role. Gendered constructions were evident, although most often they seemed to seep almost unconsciously into the courtroom as part of the contemporary culture rather than as a deliberate courtroom tactic.

In addition to the evidential or 'proof' element of the trial, however, the adversarial model, being concerned not with 'truth' but with argument, gives rise to a second element, that is rhetoric.

### **The Role of Rhetoric**

Most speech, it can be argued, is motivated speech (being concerned with achieving a particular purpose), or value laden. Thus it can also be argued that much speech is rhetorical, being impressive or persuasive. However, the trial process gives rise to a special type of rhetorical speech (legal rhetoric), precisely because counsel or the judiciary seek to justify their arguments or decisions and convince observers of their correctness. The dimensions of legal rhetoric are different from ordinary rhetorical

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<sup>27</sup> 15/11/95 p65-66.



speech because of the special setting and circumstances of the speech. For example, those who speak in the courtroom are well practised in persuasive speech and argument and are frequently endowed with a special status that engages the audience (this is particularly true of the judge).<sup>29</sup> It is the adversarial nature of the trial that creates an environment where the use of rhetorical speech is prolific. The trial, not being centred solely around proof but requiring inductive and deductive reasoning, inevitably becomes an arena where argument can strengthen a case and ‘facilitate’ reasoning. When something is not certain but merely probable or likely, as in the adversarial trial, persuasive argument has a significant role to play in the proceedings, it serves to shore up the evidence.<sup>30</sup>

It is inevitable, therefore, that when, as in the case of Rose West, evidence is circumstantial and the gap between evidence and certainty is at its greatest, deductive or inductive reasoning may not lead to a finding of guilt. Argument may therefore play a very significant role in the construction of a convincing case.<sup>31</sup> When used in this way argument becomes heavily rhetorical, it becomes the art of persuasion. In order to be effective in its persuasive role rhetoric seeks to empassion the listener, to motivate him or her to act in a certain way in response to the argument (to convict or acquit). It is an emotive discourse (pathos), one that draws on deeply embedded notions of wrong or right and asks the listener to respond ‘appropriately’.<sup>32</sup> However, this use of rhetoric also gives the versions of events that emerge during trials the appearance of ‘truth’ where truth may be especially elusive: ‘Advocates persuasively arguing a case could easily spin webs of meaning that attained a solid and objective enough appearance.’<sup>33</sup>

Rhetoric is evident, unsurprisingly, throughout the trials of Rose West and Myra Hindley, in the opening and closing speeches and in the way witnesses are questioned. With almost every utterance counsel are seeking to persuade the jury to draw inferences

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<sup>28</sup> Discussing *R v Taylor* The Times, 15<sup>th</sup> June (1993) in ‘Fair Trial and Free Press: legal responses to media reports of criminal trials’ *Cambridge Law Journal* 53(3), Nov 1994, 494.

<sup>29</sup> P Robertshaw ‘Summary Justice: judges address juries’ Cassel, London and Washington (1998), Ch1.

<sup>30</sup> C Perelman ‘*The Idea of Justice and the Problem of Argument*’ Richard Clay and Co Ltd, Suffolk (1963), p157.

<sup>31</sup> C Perelman ‘*Justice, Law and Argument*’ D Reidel Publishing Co, Holland (1980) p121.

<sup>32</sup> P Goodrich ‘*Jani Anglorum: signs, symptoms, slips and interpretation in law*’ in C Douzinas, P Goodrich, Y Hachamaritch ‘*Politics, Postmodernity and Critical Legal Studies: the legality of the contingent*’ London, Routledge (1994), p111.

<sup>33</sup> P Rock ‘*The Social World of an English Crown Court*’ Clarendon Press, Oxford (1993) p93.



from the evidence which support their respective versions of events. Rhetoric is used throughout the trials to shore up the evidence of guilt or innocence. The evidence is given new meaning through rhetorical methods of speech. It is rhetoric which draws upon embedded notions of gender (specifically in relation to appropriate and inappropriate femininity) to facilitate the reasoning process and lead to the conclusion that either 'she did it' or 'she didn't do it'. Due to the stronger evidence in Myra Hindley's case, recourse to this mode of argument was less common in her trial. However, in Rose West's trial the evidence was weak, circumstantial, and so gender constructs were heavily employed by the prosecution as part of the rhetorical element of the trial to 'facilitate' deductive reasoning. Additional evidence was brought in this trial with the specific intention of undermining Rose's femininity. This evidence increased the use of gender in the trial and seemingly justifies the argument that counsel drew heavily on gendered stereotypes.

Thus, as we have seen, 'truth' is not the lynchpin of the criminal trial and, consequently, there are other factors that affect the trial. Thus, there are practical limitations which stem from, for example, the adversarial format. These limitations give rise to a trial based on argument rather than fact investigation. This thesis looks at the West and Hindley cases and the types of facts which were presented to the courts, the way in which values and morals in the form of gendered constructions informed the search for 'truth', the use of rhetoric and the bases on which the jury were asked to draw inferences and fill gaps.

### **Case Preparation: The Construction of 'Truth' by Barristers**

As noted above, the actions of both the police and counsel are motivated by a wish to present a feasible account to the jury, rather than to discover 'the truth'. The account of events they finally settle upon is based on partial information, which has been mediated through several sources.



(Events) are interpreted and encoded by various actors and agencies in the criminal process in a whole variety of ways, each of which bears the stamp of complex social and professional patterns surrounding the role of each agent.<sup>34</sup>

The above quotation argues that evidence/information passes through several agencies before it is heard in the courtroom. Initially the police gather evidence and, as we have seen above, the process is adversarial rather than inquisitorial and, thus, may exclude evidence. The information is then passed to the CPS and defence solicitor who again process the information in putting together a case. Before reaching the courtroom the information is also processed by barristers, who also select evidence for exclusion or emphasis. All the individuals who handle and process the evidence/case will make different decisions and interpretations as to what information to investigate, include, exclude, ignore or dismiss as irrelevant.

The nature of police investigation has been explored briefly above. Having prepared a case, the police pass the information to the CPS and once the CPS have decided to proceed they will pass information to the defence solicitor. The defence and prosecution solicitors then prepare briefs for counsel. In doing so s/he would have: identified what needs to be proved and disproved; researched the relevant law; interviewed witnesses; assessed the opponent's case and planned how to challenge or rebut it; selected experts and gathered expert evidence; and tested the case through a 'preliminary enquiry' which scrutinises the evidence and tests witnesses' accounts.<sup>35</sup> Counsel then conducts his/her own analysis of the available information. The decisions the barrister then makes are governed by both the available information and how s/he anticipates that information will be received by the jury. This process is most important for the prosecution barrister who has to prove his or her case 'beyond reasonable doubt'. Although several different categories of decision-making have been identified,<sup>36</sup> by far the most effective means of ensuring juries accept a proposition of guilt is to arrange the evidence into a story or

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<sup>34</sup> J Morrison and P Leith *'The Barrister's World'* OUP, Oxford (1992) p85.

<sup>35</sup> D Napley *'The technique of Persuasion'* London, Sweet and Maxwell (1975) pp1-49

<sup>36</sup> For example, the probability model describes how jurors weigh up the probability that several related events occurred and brought about the final result. The algebraic model describes how on hearing a piece of evidence jurors evaluate its meaning for the case and assess its reliability, relevance and weight in order to arrive at a conclusion. The Stochastic model describes how jurors evaluate the evidence put before them until a defining moment when the process freezes partway through the trial until the summing up when they compare the evaluated evidence to the Judge's criteria. R Hastie (Ed) *'Inside the Juror'* Cambridge, Cambridge University Press (1993), Ch 1.



narrative.<sup>37</sup> For the story to resonate with the jury's experience or understanding of the world it should be couched within a genre recognisable and familiar to them. The genre can be chosen from the stock of familiar substantive narratives which represent typical human behaviour patterns.<sup>38</sup> The adoption of a familiar narrative facilitates the jury's acceptance of counsel's version of events. Pennington and Hastie found, for example, that when the narrative format is broken up and the evidence is not produced in the story order it, and thus the proposition argued for, is less likely to be accepted.<sup>39</sup> The defence counsel need only create a doubt or identify a gap or uncertainty in the prosecution's case, therefore, the process of narrative creation is predominantly used in the construction of the prosecution case. Unless, that is, the defence seek to offer their own narrative rather than merely challenging that offered by the prosecution by exposing gaps and inconsistencies.

Thus, frequently in preparing for trial counsel will construct a story from the evidence. The story will be moulded around the available evidence and the theory which counsel elicits from that evidence. The theory is a logical statement that embodies the argument as a whole. So, for example, the defence theory of Rose West's case was that Rose West was oblivious to the killings being carried out by Fred and that the prosecution failed to bring any evidence to link her to the crimes. The theory, which provides a framework to account for the facts, will then guide counsel in developing a strategy and a narrative. Within the story certain themes which counsel determines to be important elements of the story, and are deemed to aid its acceptability, will be selected for emphasis.<sup>40</sup> The themes add power to the story by drawing on familiar constructions or understandings of events. For example, one theme used by the defence in the Rose West case was subordination and physical abuse (domestic violence). It is hoped that the themes will resonate with the jury's experience or general knowledge and aid their acceptance and understanding of the narrative. The story itself is an account of a succession of events

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<sup>37</sup> As was discovered by Bennett and Feldman *'Reconstructing Reality in the Courtroom'* London, Tavistock Publications (1981).

<sup>38</sup> B Jackson *'Narrative Theories and Legal Discourse'* in C Nash (Ed) *'Narrative in Culture'* London, Routledge (1990) p30.

<sup>39</sup> R Pennington and R Hastie *'The Story Model for Juror Decision Making'* in R Hastie (Ed) *'Inside the Juror'* Cambridge, Cambridge University Press (1993) p210.

<sup>40</sup> Anderson and Twining *'Analysis of Evidence: How to do things with facts'* London, Weidenfeld and Nicolson (1991) Ch3.



which also account for or explain all of the evidence/facts and which supports the theory. It is crucial, therefore, that the story both accounts for all of the evidence and is internally consistent (there are no contradictions in the evidence/facts/account which is provided). Inconsistencies in the story or its failure to take account of evidence will create doubts as to its veracity and will be exploited by the opposition.<sup>41</sup> This is particularly important for the prosecution, as inconsistencies that raise doubts in relation to their case may prove adequate to raise a 'reasonable doubt'. In theory, if the story is internally consistent and accounts for all the available evidence it will reduce the defence's scope for counter argument, aid the jury's comprehension and absorption of the evidence and lead them through a series of inductions/deductions to a conclusion of guilt.<sup>42</sup>

Legal stories, however, are not constituted solely by the available evidence that has been gathered. Like all good stories, how convincing they are can be improved by including information beyond the bare bones of fact. This is the context in which the action takes place. Thus, in addition to the theory, narrative, and themes, counsel may also identify non-evidential factors that will aid the acceptance of the story by causing the jury to identify with it. If the story resonates with the jury's own experience or knowledge it is more likely to be believed. Counsel may therefore identify 'generalisations' to be included in the case. Generalisations are commonly held beliefs or knowledge that will help the jury to make sense of the evidence.<sup>43</sup> Generalisations may exist at a number of different levels. For example, a case specific generalisation is established in relation to a specific case; for example, that a particular relationship between X and Y was dominated by Y. General knowledge generalisations, however, are well established throughout society and are readily accepted by the court. For example, that young men are the most likely group in society to engage in joyriding. Belief generalisations, like general knowledge generalisations, may be readily accepted by an entire community, but they are based upon bias and prejudice. For example, that deviant or 'bad' women are more likely to commit crimes than maternal, caring and passive women are. Employing these generalisations can force or encourage the jury to

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<sup>41</sup> Bennett and Feldman call this tactic 'challenging' the narrative. *'Reconstructing Reality in the Courtroom'* London, Tavistock Publications (1981) Ch 5.

<sup>42</sup> D Schum *'Argument Structuring and Evidence Evaluation'* in R Hastie (Ed) *'Inside the Juror'* Cambridge, Cambridge University Press (1993).



use deductive reasoning and reach the desired conclusion. In other words, the use of generalisations can be a tool to help fill the gap between evidence and conclusion. Thus, as part of their case construction counsel will seek to identify generalisations that may be invoked in the juror's minds by the evidence and select some which are favourable to their case for emphasis and seek to suppress others which support the opponent counsel's case.

It is through belief generalisations that gender is frequently brought into play in criminal trials. Acceptance of a particular women's criminal behaviour, due to understandings of female criminality explored in chapter one, is partly dependant on the jury's acceptance of the female defendant as having rejected appropriate femininity. Prosecution counsel, therefore, rely on stereotypical constructions of the female offender as either mad or bad so that the story of her criminal action does not jar with the jury's assumption of female conformity. The generalisation of conformity must be replaced with one of non-conformity. In the cases of Rose West and Myra Hindley the nature of their crimes was so contrary to commonly held views about femininity that generalisations about inappropriate femininity became themes in their own right. This was most acute in the trial of Rose West in which 'femininity' became a major theme of the trial. Through the exploration of her sexuality, evidence of which was allowed as 'similar fact evidence', and other themes such as maternity a sense of her guilt was reinforced by the prosecution.

A second method of facilitating the acceptance of the story is to develop emotive discourses within the narrative. These are known as 'thelmas'.<sup>44</sup> Thelmas, like generalisations, do not form part of the 'evidence' but which are designed to have an emotive effect on the jury, for example, by eliciting sympathy. An example from the instant cases is the 'thelma' that accompanies the evidence relating to the victims. This prosecution evidence is accompanied by an emotive discourse that seeks to personify and humanise the victims, who would otherwise be stripped of their personalities and individuality by the clinical nature of the evidence. The consequence of attaching an

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<sup>43</sup> Anderson and Twining *'Analysis of Evidence: how to do things with facts'* London, Weidenfeld and Nicolson (1991) pp366-369.

<sup>44</sup> Twining *'Re-thinking Evidence: exploratory essays'* Evanston, Illinois Northwestern University Press (1994) Ch 7.



emotive discourse is that the jury can understand the sense of loss associated with each victim.

These additional components, when combined with the evidence, produce an account of the crime which the jury can make sense of. The resulting narrative presents the evidence in a form that has meaning within the experience of the jurors and thus within the real world that exists outside of the courtroom. It places the actors in the story within an identifiable context and attributes them with motives and their actions with meaning. However, this amalgam and manipulation of available information results in a total reconstruction of the case which may result in the exclusion of some evidence, with attention being diverted from weaknesses in the evidence and with non-evidential information being included for consideration. At worst, the evidence becomes the least important element of the trial.<sup>45</sup>

If the story produced by the prosecution is internally consistent and accounts for all the evidence the defence will be unable to ‘challenge’<sup>46</sup> the offered narrative. If this is the case they can ‘redefine’<sup>47</sup> some crucial element of the story that alters the meaning of the evidence. The element of the narrative the meaning of which is to be changed through ‘redefinition’ must be important enough to the prosecution case that the entire story can be restructured around the altered meaning. For example, aggression becomes self-defence. Alternatively, the defence can offer their own narrative account of the evidence. This is known as ‘reconstruction’.<sup>48</sup> A defence barrister reconstructing his or her own version of events will go through the same process as the prosecution in preparation for trial, as identified above. This is a lengthy and costly process and is likely, therefore, to be a rare response. It was, however, used by the defence in the Rose West case. The result was that the prosecution narrative was implicitly challenged, as new unaccounted for evidence was produced and a new account was offered. The defence, however, lost the case, perhaps because of the strength of the thelmas and generalisations, employed by the prosecution, which became themes in their own right.

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<sup>45</sup> Twining *‘Re-thinking Evidence: exploratory essays’* Evanston, Illinois Northwestern University Press (1994) Ch 7.

<sup>46</sup> Supra No 39.

<sup>47</sup> Bennett and Feldman *‘Reconstructing Reality in the Courtroom’* London, Tavistock Publications (1981) Ch 5.

<sup>48</sup> Bennett and Feldman *‘Reconstructing Reality in the Courtroom’* London, Tavistock Publications (1981) Ch 5.



By the time a case comes to court it will have been through several processes. In this final stage the evidence has been selected and weighed by counsel, it has been reformulated to create a comprehensible, suitable and, what is judged to be, an acceptable narrative. The resulting representation of events 'is not in any sense a complete picture made up in any comprehensive or scientific way.'<sup>49</sup> The final case of both the prosecution and defence, therefore, may be far from the 'truth'. This understanding of truth does not pertain to actual truth, but it produces two versions of truth, which contain low levels of ambiguity and high levels of consistency and completeness.<sup>50</sup>

## **In the Courtroom**

### **The Physical Environment**

Before examining the way in which the case is communicated to the judge and jury during the trial, it is important to understand the environment and atmosphere in which it will take place. The physical environment of the courtroom will effect the responses and actions of those observing the case, most importantly, the jury and the witnesses whose evidence is vital in the construction of the case. Unlike the courtroom regulars (judge and counsel) the courtroom will be an alien environment for many of these lay participants. Law and its processes are isolated from and elevated above the everyday by their pomp, ceremony and majesty. For lay participants it may be a baffling and intimidating spectacle. This combined with their lack of familiarity, may cause these participants to be nervous and uncertain in the new environment. This is not only as a consequence of the courtroom's procedures and practises, but also because of law's regal association, borne out by the Queen's role in making law (the opening of Parliament and the Royal assent), and her continued presence in the courtroom itself through the Royal crest, the ceremonial dress, the pageantry and regality, the majesty<sup>51</sup>

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<sup>49</sup> J Morrison and P Leith *The Barrister's World* OUP, Oxford (1992) p78.

<sup>50</sup> P Robertshaw 'Law, Language and Rhetoric' *MLR*, Vol 50, Nov 1987, 971.

<sup>51</sup> D Hay discusses the importance of the combination of law's majesty, justice and mercy as at the root of authority in 'Property, Authority and Criminal Law' In *Albion's Fatal Tree* D Hay et al (Eds) London: Allen Lane (1975).



and reverence.<sup>52</sup> Thus, law as a phenomenon is likely to be inaccessible, mystifying and intimidating for lay participants. This has particular importance for the jury in their decision-making capacity.<sup>53</sup>

This isolation of law from the everyday combined with the physical isolation of the courtroom facilitates the process of narrative and truth construction. Within a physical space which is removed from the everyday, everyday reality can be suspended by a good barrister and that reality reconstructed to suit his or her own purposes.<sup>54</sup> Goodrich describes the courtroom as being like a bunker with small, high, often barred windows, its position in the city, often elevated and frequently surrounded by other legal institutions as a world within worlds.<sup>55</sup> Thus, with this suspension of everyday reality a good barrister can pick and choose which elements of everyday experience, in the form of generalisations, are allowed to enter the court and inform the jury's decision-making.

The most important figure in the arena of the courtroom is the judge who is conspicuously elevated above the proceedings and to whom everyone exhibits respect and deference. All must stand upon his/her entry, s/he is enthroned, dressed in majestic robes and s/he is never addressed by name but by title (your honour etc).<sup>56</sup> S/he oversees and controls proceedings. Yet, despite the evident superiority of the judge and the strange nature of the proceedings, there are those who are comfortable with this environment: counsel. Barristers are placed physically centre-stage when they conduct their case, visible to all those present. They understand the system and can speak the language of law.<sup>57</sup> This language, it has been argued is a further means through which the repeat players (judge, counsel and court personnel) are advantaged and the one shot players (jury and witnesses)<sup>58</sup> are disadvantaged.<sup>59</sup> Not only is legal language a foreign language to the jury and witnesses, but they are assumed to understand it and little

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<sup>52</sup> P Goodrich *'Languages of Law: from logics of memory to nomadic masks'* Weidenfeld and Nicolson, London (1990) p222.

<sup>53</sup> See Ch 5.

<sup>54</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) p94-3.

<sup>55</sup> P Goodrich *'Languages of Law: from logics of memory to nomadic masks'* Weidenfeld and Nicolson, London (1990) p189.

<sup>56</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) Ch 5.

<sup>57</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) p59.

<sup>58</sup> These phrases were coined by Gallanter in 'Why the 'Haves' Come Out Ahead: speculations on the limits of legal change' (1974) 9 *Law and Society Review*, 95-160.

<sup>59</sup> Goodrich describes legal language as exclusionary P Goodrich *'Languages of Law: from logics of memory to nomadic masks'* Weidenfeld and Nicolson, London (1990) p185.



attempt is made to assist their understanding<sup>60</sup> Their likely discomfort with the courtroom procedures is thus intensified by the esoteric nature of legal language. In contrast, counsel are in command of legal language. As a consequence of all these factors they are confident and in control:

Counsel had a theatricality that embraced a loudness of voice, a thespian's gestures and a physical presence ... they wore wigs and robes that could be flung, trailed or draped for dramatic effect. They had been apprentices in a craft that celebrated stories about great dramas and the masters of advocacy. Barristers were at the centre.<sup>61</sup>

Theirs was the appearance of self control and organisation that symbolised many things.<sup>62</sup>

Within this alien and tightly controlled world, lay participants are at the mercy of those who know the system and who command centre stage. Consequently, the jury are passive recipients of the narratives with which they are presented.

The barrister's confidence and ease with the environment contrasts sharply with that of lay persons who are described by Paul Rock as 'an uneasy agglomerate of spectators'.<sup>63</sup> This gives counsel power over both the jury and witnesses. It is the witnesses who may well be described as suffering the greatest ordeal. Ordinary members of the public are required to enter an alien environment, step into an elevated box in view of the whole court and speak publicly, something which few have experienced before. Frequently a combination of fear, embarrassment and intimidation causes witnesses to speak quietly, whereupon they are asked to speak up, thus increasing their embarrassment.<sup>64</sup> Every word they utter is judged and weighed up. Witnesses are 'a conspicuous object to be examined closely by eye and ear.'<sup>65</sup> Again, their inevitable lack of confidence makes witnesses, like the jury, dependant on counsel. Thus, their testimony is restricted not only by the rules of evidence, but also by their dependence on counsel for a lead, again

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<sup>60</sup> W O'Barr *'Linguistic Evidence: language, power and strategy in the courtroom'* Academic Press, New York (1982) pp40-41.

<sup>61</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) p56.

<sup>62</sup> Ibid p58.

<sup>63</sup> Ibid p194.

<sup>64</sup> Ibid p51.



facilitating counsel's power to construct testimony to fit their particular narrative (see below).

These relationships and other relationships that exist in the courtroom are confirmed and shored up by the physical setting: 'The very arrangement of physical space in the Crown Court centre confirmed identities, segregated groups and managed relations.'<sup>66</sup>

Indeed Twining describes the physical setting as a set not unlike that of a play which helps to define and control the action.<sup>67</sup> The set elevates the judge and places counsel centre stage. It also confirms their authority by separating them from lay participants through the various bars and rails and the provision of their special facilities and rooms. The jury's isolation from the outside world is intensified by their separation into the jury box and their controlled entrance and exit.<sup>68</sup> The defendant too is defined by his/her physical position. The dock in which s/he stands is set apart from the proceedings and opposite the bench, as if in opposition with law itself.<sup>69</sup> The positioning of the dock places the defendant 'on display' as though s/he is already guilty. The defendant's position also confirms his or her subordination to the law and legal procedure by excluding him/her from the process: s/he is positioned behind counsel who talk about, not to, him/her, and s/he is unable to speak except when in the witness box.

In this highly controlled and ritualised environment those with knowledge and experience are able to use their advantage in the construction of their cases, using a language which reinforces their power.

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<sup>65</sup> Ibid p51.

<sup>66</sup> Ibid p197.

<sup>67</sup> J Jackson 'Law's Truth, Lay Truth and Lawyer's Truth: the representation of evidence in adversary trials' *Law and Critique*, Vol 3, No 1, (1992) 29.

<sup>68</sup> P Rock *The Social World of an English Crown Court* Clarendon Press, Oxford (1993) Ch 6, also see P Goodrich *Languages of Law: from logics of memory to nomadic masks* Weidenfeld and Nicolson, London (1990) Ch 6.

<sup>69</sup> P Goodrich *Languages of Law: from logics of memory to nomadic masks* Weidenfeld and Nicolson, London (1990) p191.



## In the Courtroom: The Construction of 'Truth' by Barristers

### **Courtroom Pragmatics versus the Construction of Narrative**

The ritualised and formal character of the trial is set from its very beginning. All those in the court are directed to stand upon the entrance of the judge and the first utterance from the court is the reading of the charges to which the defendant responds. The reading of the charges and the response (guilty or not guilty) is indicative of the framing and classification of events into legal the categories and language that will characterise the whole trial. This legal categorisation controls, for example, whether evidence can be heard, the form it takes and the flow of information. As they are designed to control the conflict that arises from the adversarial system their purposes are complex; including, for example, to protect witnesses, or to ensure the reliability of evidence. However, these rules and categories may also effect the 'reconstruction' of events into narrative. These hinder the construction of a free flowing narrative during the trial and thus also effect the jury's understanding and reception of the case. It is, therefore, imperative that counsel resolve or at least manage the problems so that the story they have constructed in preparation for the trial is evident to the jury.

Within the trial testimony is crucial, both in terms of providing evidence and in producing narrative accounts. Counsel can use various means to ensure that a narrative format is retained in spite of the fragmentation implicit in courtroom procedure. For example, the opening and closing speeches can be used to summarise the narrative before and after the main body of the trial, thus providing a frame for the case, and witnesses can be called in chronological order to retain narrative coherence.<sup>70</sup> Jackson argues, however, that the importance of narrative has been over emphasised and that the most important factor in jury decision-making is the performance and credibility of witnesses.<sup>71</sup>

Like the narratives that run through the trial as a whole, however, the testimonies offered by witnesses is subject to construction. Witnesses for example complain that they do not tell the 'truth' but find their accounts limited by the nature of the

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<sup>70</sup> Further methods are discussed below.



questioning they were subjected to.<sup>72</sup> Indeed testimony can be engineered to hide the truth, through coaching of witnesses to make them appear credible. Furthermore, honest and valuable testimony can be undermined by cross-examination despite its ‘truth’.<sup>73</sup> Coaching of witnesses may, therefore, be of crucial importance. O’Barr argues that the presentation of evidence will effect the assessment of the credibility of the witness and determine whether evidence is accepted or not. This, he argues, is because jury’s decisions do not rest on facts, but on intuition.<sup>74</sup> Part of the jury’s assessment of the testimony will be made on its narrative coherence. Thus, counsel seek to maintain narrative coherence at two levels: meta-narratives (a narrative which runs throughout the trial joining the evidence into a story) and micro-narratives (narratives within individual testimonies). Thus, it can be argued that, although witnesses can be of crucial import in a trial, they are only part of a constructed whole, and that their testimony is also constructed to some extent, as is their credibility. It is the construction of the meta-narrative to include the complementary micro-narratives which is, therefore, arguably most important.<sup>75</sup> The prosecution and defence’s meta-narratives are introduced during the opening speeches.

## **The Opening Speeches**

The opening speeches of a case should tell the story counsel propose leads to a conclusion of guilt or innocence. In addition, it should highlight the major themes counsel have chosen for emphasis, introducing them to the jury so that they are readily identifiable later in the trial. In doing so, the speech introduces the narrative and describes the process by which the jury will be expected to reach the ‘correct’ conclusion. In addition, the speech provides the jury with a framework that assists them to understand and arrange the evidence that follows. It is important therefore that the

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<sup>71</sup> B Jackson ‘*Law, Fact and Narrative Coherence*’ Merseyside, Deborah Charles Publications (1988).

<sup>72</sup> J Jackson ‘Law’s Truth, Lay Truth and Lawyer’s Truth: the representation of evidence in adversary trials’ *Law and Critique*, Vol 3, No 1, (1992) 29.

<sup>73</sup> S Cohen ‘*Due Process of Law*’ The Carswell Company Ltd, Toronto (1977), Ch 5.

<sup>74</sup> W O’Barr ‘*Linguistic Evidence: language, power and strategy in the courtroom*’ Academic Press, New York (1982), Introduction and Ch 2.

<sup>75</sup> R Pennington and R Hastie ‘*The Story Model for Juror Decision Making*’ in R Hastie (Ed) ‘*Inside the Juror*’ Cambridge, Cambridge University Press (1993) In R Hastie (Ed) ‘*Inside the Juror*’ Cambridge, Cambridge University Press (1993), p210.



speech engages the jury and captures their attention. Once the story has been relayed through the opening speech the drama unfolds through the testimonies that follow.<sup>76</sup>

### **The Examination in Chief**

As noted above, the meta-narrative of the trial is made up by many micro-narratives, predominantly in the form of testimonies. If the larger narrative is to be accepted by the jury it is crucial that the evidence that is imparted is regarded as reliable, and is both internally and externally (consistent with the meta-narrative and other evidence) consistent.

Reliability is dependent, for a large part, on the way in which individual witnesses are perceived. The best means of eliciting evidence, therefore, is for the witness to give it in person rather than via a written statement. The jury can then see and hear the witness and then judge their veracity and credibility.<sup>77</sup> As noted above, however, it is the act of testifying that causes witnesses to be nervous and nervousness can be mistaken for lack of credibility.<sup>78</sup> Therefore, it is important that the witness is made to feel relaxed during testimony, this will also improve their performance under cross-examination.<sup>79</sup> Du Cann argues that a good examination in chief should be pedestrian, relaxed conversational and unintrusive.<sup>80</sup> In order to settle the witness, initial questioning will often consist of factual and banal questions rather than ones directed at eliciting a narrative account.

However, when the testimony is underway counsel is advised to ‘unleash’ the witness in order to allow a free-flowing account rather than a fragmented one, as the same rules apply to micro as macro narratives; the more evident the ‘story’, the more likely it is to be accepted. Further, in allowing free narrative the evidence is not robbed of its

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<sup>76</sup> On the opening speech see J Jackson ‘Law’s Truth, Lay Truth and Lawyer’s Truth: the representation of evidence in adversary trials’ *Law and Critique*, Vol 3, No 1, (1992) 29, D Napley ‘*The Technique of Persuasion*’ London, Sweet and Maxwell (1975), p115 and R DuCann ‘*The Art of the Advocate*’ Harmondsworth, Penguin (1964) Ch 4.

<sup>77</sup> P Rock ‘*The Social World of an English Crown Court*’ Clarendon Press, Oxford (1993) Ch 2.

<sup>78</sup> W O’Barr ‘*Linguistic Evidence: Language, power and strategy in the courtroom*’ Academic Press, New York (1982), Ch 5.

<sup>79</sup> S Cohen ‘*Due Process of Law*’ The Carswell Company Ltd, Toronto (1977), Ch 5.

<sup>80</sup> R DuCann ‘*The Art of the Advocate*’ Harmondsworth, Penguin (1964), Ch 5.



spontaneity and character,<sup>81</sup> counsel will appear to trust the witness<sup>82</sup> and, consequently, the jury will also regard the witness as trustworthy. Nonetheless, it is also important that counsel maintain control of the narrative so that it does not become muddled and confusing and lose its narrative effect.<sup>83</sup> It is also crucial that counsel ensure that all relevant information comes out during the testimony and that unhelpful or damaging information does not. The process of examination in chief is not, therefore solely about recounting facts, it is about producing a believable and consistent narrative that is supportive to counsel's case. This is evident in the finding that many witnesses feel that the account that they were allowed to give was limited and did not reveal the whole 'truth'.<sup>84</sup>

## Cross Examination

Following their examination in chief witnesses are then subjected to cross-examination by the opposition. The cross examination has a single purpose: to shed doubt on the examination in chief. There are many ways to achieve this: by challenging the credibility of the witness and their testimony; by revealing a motive for misleading the court; by illustrating the witness lied or that s/he has been similarly confused in the past; by producing previously inconsistent statements; by 'tripping the witness up' by requesting information in fine detail, revealing internal inconsistencies in the testimony or external inconsistencies with the testimony of others; by revealing new facts; or by attacking the character of the witness. The options available to the advocate are numerous, providing there is a small weakness in the testimony or the witness himself or herself may be regarded as flawed in some way.

Whilst many of these techniques succeed in appearing to weaken testimony, they do not necessarily prove the testimony itself to be untrue. For example, attacks directed on the credibility of the witness's character or past confusion do not directly challenge the truth of the evidence, but merely undermine the witness. Nonetheless, it is likely that the

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<sup>81</sup> Ibid, Ch 5 and M Stone *'Proof of Fact in Criminal Trials'* W. Green and Son Ltd, Edinburgh (1984), Ch 6.

<sup>82</sup> W O'Barr *'Linguistic Evidence: Language, power and strategy in the courtroom'* Academic Press, New York (1982), Ch 5.

<sup>83</sup> D Napley *'The Technique of Persuasion'* London, Sweet and Maxwell (1975), p122.

<sup>84</sup> J Jackson 'Law's Truth, Lay Truth and Lawyer's Truth: the representation of evidence in adversary trials' *Law and Critique*, Vol 3, No 1, (1992) 29.



jury will respond by discounting the testimony. Given the many advantages of counsel discussed above, the process of undermining the witness is not difficult: 'He (the advocate) is dressed in a medieval armour sufficient to intimidate most well brought up children and quite a few adults.'<sup>85</sup> The cross-examination consists of an attack on a witness who is in an unfamiliar intimidating environment by a confident and practised advocate. The disadvantage suffered by the witness is acute and may give rise to aspersions of doubt which do not relate to the 'truth', but nonetheless effect the reception of the evidence.

To assist the advocate in this process there are a wealth of techniques (all described in advocacy manuals). There seem to be two main techniques available. Either the witness will be lulled into a false sense of security then barraged in an increasingly intensified attack and finally 'slammed' by counsel. Or, the opening question will be designed to startle the witness and 'knock him/her off balance' from the very beginning of the examination. The very process of being challenged openly is unfamiliar and will give rise to further discomfort in the witness.<sup>86</sup> Counsel may simply ignore the answers of the witness, as though dismissing them and go on to repeat the question again, employ sarcasm or directly challenge the truth of the testimony by dismissing the testimony as 'your version' or 'according to you'.<sup>87</sup> However, although the witness may be openly challenged, or his or her words moulded to give them new meaning,<sup>88</sup> it is rare that counsel will openly attack or insult a witness as this is likely to win sympathy for the witness. Advocacy manuals, in describing the many cross-examination techniques, reveal that once again it is not the quest for the truth that characterises the adversarial system. In cross-examination counsel's goal is to undermine the opposition's witnesses, regardless of whether their testimony represents the truth or not. The reconstruction of the witness's credibility may then be attempted in the re-examination.

## **The Defendant**

The testimony of the defendant is of crucial import in a trial, although it should be noted that the defendant is not compelled to testify. The defendant's performance and

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<sup>85</sup> R DuCann *'The Art of the Advocate'* Harmondsworth, Penguin (1964), Ch 6.

<sup>86</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) Ch 2.

<sup>87</sup> Ibid Ch 2 and R DuCann *'The Art of the Advocate'* Harmondsworth, Penguin (1964), Ch 6.



character form a basis on which assessment of guilt or innocence can turn. Judgments may even be made on the basis of moral prejudice (whether or not the defendant deserves punishment regardless of their guilt).<sup>89</sup> Whilst the defendant is shielded<sup>90</sup> from the use of evidence of ‘bad character’, it is unlikely that the jury will have no appreciation of their character:

Excluding character evidence from the trial will not keep stereotypes and generalisation out of the minds of jurors and judges. They will still inform opinions and impressions of the characters of the witnesses, but will do so only on the basis of the limited information available to them.<sup>91</sup>

It is through the use of generalisations relating to femininity in the Myra Hindley and Rose West trials that character evidence seeps in. And it is the appearance of what is essentially character evidence as generalisations drawing upon social stereotypes of good and bad femininity, rather than direct attacks on the character of the accused, that protects it from being identified as such and thus does not lead to the loss of the character shield. Questions not clearly identifiable as relating to character become so against the background of generalisations regarding what is good or bad femininity. This type of characterisation, which could be described as character depicted through implication, is illustrated in the Myra Hindley trial (see Chapter Four).

Alternatively, evidence of character may enter the trial through the inclusion of similar fact evidence. This type of evidence is used to link the accused to facts or events by illustrating that the accused had done similar things in the past. It may be included in a trial if it would ‘be an affront to common sense to exclude it’ and ‘its prejudicial effect (on the accused) is outweighed by its probative value’.<sup>92</sup> Similar fact evidence played a crucial part in the prosecution case against Rose West. Through similar fact evidence her violent and aggressive sexuality was evidenced and the question of her femininity

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<sup>88</sup> P Rock *The Social World of an English Crown Court* Clarendon Press, Oxford (1993) Ch 2.

<sup>89</sup> M Childs *The Character of the Accused* in M Childs and L Ellison *Feminist Perspectives on Evidence* London, Cavendish (2000) p218.

<sup>90</sup> The prosecution may only bring evidence of bad character in response to evidence of good character brought by the defence, in which case the defendant loses her/his shield: Criminal Evidence Act 1898 s1.

<sup>91</sup> M Childs *The Character of the Accused* in M Childs and L Ellison *Feminist Perspectives on Evidence* London, Cavendish (2000) p218.

<sup>92</sup> *DPP v Boardman* (1975) AC 421, (1974) WLR 673.



became a central issue in the trial. Femininity therefore became more than a belief generalisation, it became a central theme of the trial.

The public transformation and reconstruction of identity through character evidence has been described as a 'degradation ceremony'.<sup>93</sup> The degradation of the accused strips him/her of their own identity and transforms it, re-writing the history of the individual in the same way that the events which are the subject of the trial are re-constructed by the trial process. The key question that the defence and prosecution are debating is *is this the type of person to commit the offence in question?* For Myra Hindley and Rose West the questions were; *what type of woman would commit murders like this?* and *are Rose West and Myra Hindley those types of women?* Thus, the prosecution developed narratives that not only accounted for the facts, but also included a construction of the offenders that made the unthinkable possible. The defence relied on the presumption that *women do not kill* and specifically that *women do not commit sexual murders*. In both cases the defence lost. The evidence against Myra Hindley was overwhelming, the evidence irrevocably proved her participation at some level. The evidence against Rose West revealed her violent sexuality, her abuse of her children and placed her in the vicinity of the violent and sexual murders her husband confessed to. She was indeed shown to be the type of woman who could abuse and, the jury decided, the type of woman who would kill children. Yet the 'truth' was not excavated by the trial process, particularly in relation to Rose West. Counsel depended on narrative construction and character decimation.

### **The Closing Speeches**

The closing speech, like the opening speech, sets up a framework for the case. More particularly though, the closing speech sets up a framework for jury decision-making.<sup>94</sup> Through the closing speech counsel must again communicate the narrative, including its themes and theory, fitting the testimonies into the narrative framework. During the closing speech, however, counsel has the additional task of describing how the law fits into the narrative, thus justifying the conclusion they are asking the jury to draw. As the

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<sup>93</sup> H Garfinkel 'Conditions of Successful Degradation Ceremonies' American Journal of Sociology (1954) 61, 420.

<sup>94</sup> D Napley *'The Technique of Persuasion'* London, Sweet and Maxwell (1975), p161.



closing speech is the last opportunity to persuade the jury it is imperative that it is clear, concise, holds their attention, and is convincing. For this reason the speech is often divided into smaller sections. At the end of each section counsel draws conclusions, which build throughout the speech into (what is hoped will be) an irresistible conclusion of either guilt or innocence.<sup>95</sup> In this section of the trial counsel explain to the jury the inductions and deductions they should be making and put together the pieces of the puzzle

As the closing speech is not 'evidence' counsel have a great deal of freedom regarding its content and style. The closing speech is, perhaps more than any other part of the trial, an opportunity for persuasion by counsel. As such it is generally infused with rhetoric. The speech will include adjectives to bring it to life, to add reality and interest. But it will also employ specifically persuasive techniques such as repetition, simile or analogy to emphasise points.<sup>96</sup> Frequently the advocate will seek to unite the jury to his or her cause by talking in terms of 'we'. Yet, at the same time, it is not wise for counsel to alienate the opposition case by simply ignoring it as blatant partiality will not advance a case. Better to present the opposition case but use the speech to dismiss it. By presenting both sides the speech appears to be a balanced piece of judicial reasoning, which nevertheless, prioritises counsel's case and encourages the desired conclusion.<sup>97</sup>

Thus, the account that is presented will be a carefully structured and stylised piece of rhetoric. In addition, it must remain, above all things, a seamless narrative.<sup>98</sup> How much this narrative reflects the 'truth' is, however, evidently more than merely questionable.

### Conclusion

The system of criminal justice, from police investigation through to the trial, cannot be described as a search for truth, but rather as a process that shapes and moulds the 'truth'. The arguments adopted and the methods of proof selected are governed by the investigation process, the available evidence, the adversarial nature of the system

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<sup>95</sup> R DuCann *The Art of the Advocate* Harmondsworth, Penguin (1964) Ch 10.

<sup>96</sup> Ibid.

<sup>97</sup> W Twining *Theories of Evidence* London, Weidenfeld and Nicolson (1985), Ch 17.



(which dictates that versions of reality be pitched against one another) and the rules of evidence. The physical environment of the courtroom further defines the relative positions of those who are involved in the trial and their roles and status. At the centre of the process, yet largely excluded from it, is the defendant. In addition, s/he is highly visible yet segregated by the geography of the courtroom. The defendant is scrutinised by the process and portrayed in accordance with the narratives that are submitted to the court. This thesis examines the trials of two such defendants whose crimes betrayed their 'gender' and analyses how they and their crimes were constructed in their trials.

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<sup>98</sup> R DuCann *The Art of the Advocate* Harmondsworth, Penguin (1964), Ch 11.



## Chapter Four

### **The Trial of Myra Hindley**

#### **Introduction**

The following two chapters seek to uncover the techniques employed by counsel in the trials of Rose West (1995) and Myra Hindley (1966).<sup>1</sup> Specifically, from a detailed thematic analysis of the available<sup>2</sup> trial transcripts, the chapters examine the nature and construction of the opposing defence and prosecution cases presented in court, with particular reference to gender stereotyping. The analysis reveals that gendered constructs are manifested in the trials in two forms, first, as manifestations of the gendered stereotypes that seep into the courtroom perhaps unnoticed as part of an innate gendered ideology, and secondly, as part of the consciously constructed narrative of the defence and prosecution cases, either as themes or as generalisations. In both cases the defence sought to present the women as exhibiting characteristics of good femininity and the prosecution sought to construct the womens' characters using discourses of bad femininity. The chapters thus examine how the construction of femininity can form an essential part of the narratives devised by counsel.

It is suggested, however, that the trial of Rose West, displayed the greatest incidence of gender stereotyping for perhaps two reasons: because of the nature of the evidence;<sup>3</sup> and because of the impact of the feminist movement, of feminist thought and research on the legal profession by the 1990s. As a greater understanding of the court process and the importance of gender in that process has developed as a result of feminist work, so the approach of the barrister may have changed to take advantage of that information.<sup>4</sup> This

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<sup>1</sup> Part of the analysis of the content of these trials was based on an analysis of naming patterns (see Appendix 7). Consequently, from this point on a blanket naming policy has been followed in relation to all those who featured in the trials. All players will be referred to by their first names, except where it is felt that confusion will result from such a policy, for instance if a particular character has not been mentioned for some time, or where to do so would sound inappropriate.

<sup>2</sup> Parts of the Myra Hindley transcript were not available.

<sup>3</sup> The evidence in Rose West's case being weaker, the prosecution relies substantially on similar fact evidence that is wholly concerned with Rose's sexuality: see Ch 5.

<sup>4</sup> Kennedy examines the exploitation of gender in the courtroom and its sophisticated use in advocacy in H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993).



has had positive effects in the courtroom. For example, new information gathered by feminist research has meant that women's experiences have a legitimate and available discourse through which to be heard. Before the completion of such work, women were frequently silenced by the court process and the strict rules of evidence, which failed to recognise the validity of their experiences.<sup>5</sup> For example, prior to the recognition and labelling of 'domestic violence' and 'battered woman syndrome' abused women did not have a discourse through which to communicate their experiences. Such phenomena now form part of the constructed case as, having been 'uncovered', they are more readily understood and accepted by juries. Thus, the background of generalisations within which counsel work have changed over time and so the constructions adopted by them also change, taking account of new ways of thinking about gender.

An essential part of the chapters is, therefore, an examination of how the cases of the defence and prosecution are 'constructed'. The chapters analyse the cases as 'reconstructions' of the events according to the theory, narrative, themes and themas counsel developed. In particular, they examine how femininity featured as part of the process of construction and how the use of gender<sup>6</sup> made stories more or less plausible. As noted above, differences are evident in the tactics employed in the two cases. There may, however, be an additional factor separating the approaches of defence counsel in the two cases. That is that a restriction was placed on the Myra's defence counsel's case by the overlapping and contradictory interests of the two defendants, Myra Hindley and Ian Brady. Although the two defendants were separately represented, the version of events they presented to the court was identical and they presented a united front. Myra refused to allow her counsel to defend her by using any evidence or tactics that would damage Ian's case. Counsel advised her against this approach stating that it would cause significant damage to her defence, however, she insisted.<sup>7</sup> Whilst the focus of this work is on Myra, Ian's testimony<sup>8</sup> and version of events and the case presented by his counsel were relevant in her construction. The joint commission of the Wests' crimes similarly

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<sup>5</sup> A Worrall *'Offending Women'* London, Routledge (1990), pp11-21.

<sup>6</sup> Although the thesis concentrates on the female defendants and the use of femininity there will be some reference to both Ian and Fred and thus some examination of masculinity.

<sup>7</sup> This was revealed by Myra in a letter she wrote to the Guardian Dec18th (1995). The damage caused by this 'tactic' on Myra's part would be compounded by the fact that the jury will naturally imply guilt by association, see The LSE Project 'Juries and the Rules of Evidence' *Crim LR* (1973) 221 at p218.

<sup>8</sup> Although testimony refers to the evidence given by the witness, and not the questions asked of him or her by counsel, for the purpose of simplicity in the following chapters it will to the dialogue of both parties.



hampered Rose's trial, although in a different way. Although she renounced her relationship with Fred West and thus, unlike Myra, was not restricted by a desire to protect him, his absence damaged her case. Had he been there, his claims of sole responsibility would probably have been more readily accepted. Thus, practical constraints were placed on counsel in both cases and played a significant role in the nature of the cases presented to the courts. For instance, they affected the substance of the narrative that was offered to the court. It is this narrative, combined with the available knowledge, discourses and generalisations that impact on the degree and nature of recourse to gendered stereotypes in the trials.

### **The Facts<sup>9</sup>**

In 1966 Myra Hindley was jointly tried with Ian Brady for the murders of Lesley Ann Downey and Edward Evans and as an accessory after the fact in relation to the murder of John Kilbride. Ian Brady was tried for murder in all three cases.

#### **John Kilbride**

John Kilbride, aged 12, disappeared from Ashton Market in November 1963 where he was earning money for odd jobs. It is now known that he was abducted from there by both Ian and Myra, taken to Saddleworth Moor, sexually assaulted by Ian, killed and buried. The only evidence linking the pair to the body of John Kilbride was an exercise book belonging to Ian in which he had written John's name and a photograph of Myra on his grave. However, at the time of the trial it could not be proved that Myra knew either of the name in the exercise book or that she knew she was standing on the grave when the photograph was taken.

#### **Lesley Ann Downey**

Lesley Ann Downey, aged 10, was abducted from a fair ground on Boxing Day 1964. She was taken to Myra and Ian's home where she was stripped naked, photographed,

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<sup>9</sup> A directory to all those named in the following chapters can be found in Appendix 1.



sexually assaulted and killed. Parts of this were recorded on an audiotape. She was then taken to Saddleworth Moor and buried. The photographs of Lesley Ann and the tape recording were found in a locker at a railway station in a suitcase containing incriminating and pornographic material. Photographs of the site of her grave were also found. Ian and Myra contended that Lesley Ann Downey had been brought to their house by Myra Hindley's brother-in-law, David Smith, and another man and had willingly posed for the photographs in return for payment. After the photographs were taken Myra and Ian claimed that, whilst they remained in the house, Lesley Ann Downey left with the two men.

### Edward Evans

Edward Evans, aged 17, was picked up in a bar by Ian and Myra in October 1965. He was invited back to their house for a drink. After they arrived home, Myra went to fetch her brother-in-law, David Smith. Ian then killed Edward Evans in front of David Smith with a hatchet. Ian, David and Myra then cleared up the mess, wrapped up the body and locked it in the spare room. It is thought that this episode was meant to 'enrol' David in the murders. David, however, returned home and told his wife, and together they called the police. The police went to the house, discovered the body and arrested Ian. Myra was arrested later. Further investigation led the police to the hidden suitcase and other evidence which linked both Ian and Myra to the other murders. It was claimed by Ian that the abduction of Edward Evans was part of a robbery that he had planned with David and that the robbery had gone wrong.

## **The Theories of the Case**

### **The Prosecution**

It was the contention of the prosecution that Myra Hindley and Ian Brady were both involved in the abduction and murder of John Kilbride, Lesley Ann Downey and Edward Evans. The evidence against Ian, and to a slightly lesser extent Myra, was compelling. There were photographs of the graves of both John and Lesley Ann, a tape



recording and photographs of Lesley Ann being abused and the jotting in Ian's exercise book naming 'John Kilbride'. When they raided their home the police had also found Edward's body and a 'body disposal plan' identifying the moors as the intended burial site. In the case of Edward Evans, the prosecution conceded the minor and reluctant involvement of David (Myra's brother-in-law) but he was awarded immunity in return for his testimony.

### **The Defence**

Both defence teams dismissed the prosecution's theory and sought to redefine<sup>10</sup> the narrative. Ian's counsel argued that he was responsible only for the death of Edward Evans. His death, they argued, was the consequence of a plan to 'roll a queer' developed by Ian and David which went wrong. Myra's defence team argued that she was responsible only in so far as she reluctantly assisted Ian and David to clear up after Edward's murder and was involved in the plan to dispose of his body. In relation to Lesley Ann, both Ian and Myra admitted to meeting and photographing her, again Myra claimed that she did this reluctantly. However, both argued that Lesley Ann left the house alive and well. Both Ian and Myra categorically denied ever having met John.

Unfortunately, only a partial analysis is possible in relation to Myra and Ian's trial, as only parts of it were transcribed. The available transcript consists of the testimony of the prosecution witnesses David and Maureen Smith (Myra's brother in law and sister) and the defensive testimonies of Myra and Ian. Consequently, the analysis cannot account for the entire prosecution and defence method of case construction. The omissions include, for example, the structure of the trial and the order of witnesses, the opening and closing speeches. One further omission, which is inevitable in the analysis of transcripts, is that of non-transcribable communication such as tone and gesture. These can play an important role both in terms of the transmission of non-verbal communication *in addition* to the spoken word; such signs can express confidence and

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<sup>10</sup> Redefinition is a method described by Bennett and Feldman ( '*Reconstructing Reality in the Courtroom*' London, Tavistock Publications (1981), p 99). The method involves selecting and redefining a weak element of the prosecution story ensuring that it is one which is important enough to enable the defence



non-verbal communication can also *lend meaning* to the spoken word adding, for example, sarcastic tone. Nonetheless some important themes can be identified.

### **The Construction of Myra Hindley**

The accusations against Myra Hindley and the evidence against her implicitly undermined her femininity. They ran contrary to the association of women with caring, maternity and passivity, as explored in chapter two. Consequently, her non-conformity to contemporary norms was immediately raised. This chapter explores how counsel on the two opposing sides dealt with the issues of gender that are implicitly raised in a trial of this nature.

Research on femininity in the criminal justice process has revealed that constructing or affirming a female defendant's femininity is a useful defensive tool. By establishing a female defendant's femininity she is less likely to be perceived as criminal because of the association of crime with masculinity.<sup>11</sup> This may affect the nature of the charge against her, reducing its severity,<sup>12</sup> or of the punishment imposed.<sup>13</sup> Perhaps it may even lead to acquittal. On the other hand, the appearance of a female offender as 'deviant' (unfeminine) results in the appearance of double deviance and, consequently, a potentially harsh response by the criminal justice system.<sup>14</sup> This chapter explores the trial of Myra Hindley with a view to identifying these two opposing constructions within the cases presented by the prosecution and defence.

### **Constructing Femininity?**

On examining the transcripts it is immediately evident that the trial is riddled with issues of gender and gender stereotyping, particularly in relation to femininity. However, many of the characteristics of femininity did not take a concrete form and were not developed and utilised to their fullest capacity. This is most evident through a

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to restructure the story after the redefinition of the key element.

<sup>11</sup> J Messerschmidt *'Masculinities and Crime: critique and reconceptualisation of theory'* Lanham, MD : Rowman and Littlefield (1993).

<sup>12</sup> For example, it is argued that the construction of Karanjit Ahluwalia as feminine resulted in the lesser finding of manslaughter. D Nicolson 'Telling Tales: gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2, 185.

<sup>13</sup> H. Allen *'Justice Unbalanced: Gender, psychiatry and judicial decisions'* Oxford, OUP (1987).



comparison of the two trials (Rose West's and Myra Hindley's).<sup>15</sup> Although a number of testimonies from Myra's trial were available, several were discarded for the purposes of the present study as they did not embody the gender constructions used in Myra's portrayal. The richest source of material in terms of gender construction were the four testimonies used in this chapter,<sup>16</sup> particularly Ian and Myra's testimonies. In contrast, almost every testimony in Rose's trial was used by counsel in her gendered portrayal. It is possible, therefore, to infer from this most basic finding that counsel in Myra's trial did not engage in active, purposeful gender construction of the defendants, as in Rose's trial.

The subtle level on which many of the constructions of femininity worked in Myra's trial is apparent in a number of presumptions evident in the defence and the prosecution counsels' examinations of the main witnesses. For example, it can be seen in assumptions made about the nature of male and female relationships and emotions. It should be noted that these presumptions are also frequently included in Myra and Ian's version of events.

## **Emotions**

Examination of the transcript reveals core assumptions about the way in which the different sexes experience emotions. These assumptions, held by both the defence and prosecution, affected the method and substance of questioning of the witnesses. This is most evident in the very different attitudes toward Ian and Myra's emotions.

By examining both the amount of time devoted to discussing emotions and the content or substance of those discussions (see Appendices 2 and 3) in the testimonies of both defendants, a pattern emerges. It appears at first glance that a great deal of time was devoted to discussion of emotions in Ian's testimony. However, a closer inspection of the content reveals that the reality was very different. Although there was discussion of

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<sup>14</sup> S Box *'Power, Crime and Mystification'* Tavistock Publications, New York, London (1983) p173.

<sup>15</sup> See Ch 7

<sup>16</sup> These are the testimonies of David and Maureen Smith, Myra Hindley and Ian Brady.



feelings in Ian's testimony, this discussion was predominantly about Myra's emotions, thus her emotions were central.

Ian was not given, nor did he take the opportunity, to discuss his feelings and they were not, therefore, used to excuse or mitigate his conduct (as were Myra's, below). This use of the discourse of emotion was particularly evident in Myra's counsel's cross-examination of Ian. His questioning addressed the strength of her feelings for Ian but did not involve an examination of his feelings for her:

Myra's counsel: 'I would like you to tell us what her feelings were for you?'

Ian: 'Well the same as man and wife.'

Myra's counsel: 'Was she in love with you?'

Ian: 'Yes?'<sup>17</sup>

In her examination in chief, Myra was directly questioned about what her feelings were about various matters. She took advantage of this approach and responded in a way that presented her as 'normal' and mitigated her blameworthiness by explaining and excusing her behaviour through her devotion to Ian.

Myra's counsel: 'What were your feelings for him?'

Myra: 'I became very fond of him. I loved him. I still – I love him.'<sup>18</sup>

Much of this type of questioning relates to her reaction to Edward's death: her response was one of feminine normality, it was of horror:

Myra's counsel: 'How were you feeling about these matters?'

Myra: 'I was sick through seeing the blood, I was crying, I was horrified, I was frightened ...'<sup>19</sup>

Any discussion of Myra's feelings in her examination in chief revolved around fear, shame and worry, all of which fit with what one would expect as a stereotypical female reaction. In taking this approach Myra's counsel associated Myra with 'normal' female

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<sup>17</sup> p29. All page numbers are references to the transcript unless stated otherwise.

<sup>18</sup> p68

<sup>19</sup> p73



emotions. This perhaps suggests some awareness of the potential power of the application of this discourse in relation to women.

Although Ian's examination in chief did discuss emotions, Ian himself remained devoid of emotion throughout, perhaps based on the masculine assumption of men's unemotional nature.<sup>20</sup> The only account of his reaction to Edward Evan's murder was his failure to 'feel'.

'I just kept hitting him until he shut up.'<sup>21</sup>

This reflects Ian's overall defence to his attack on Edward: it is framed as a masculine response to the situation, in which Edward 'provoked' the attack.

The prosecution attacked both Ian's masculine and Myra's emotional accounts during their cross-examinations. Myra sought to maintain her portrayal of an emotion-based response to the death of Edward. However, in the face of the prosecution's attack on her conduct, her protestations became more frequent. Claims of anxiety, fear,<sup>22</sup> shame and panic appeared fourteen times during her cross-examination.<sup>23</sup> As Myra's cross-examination continued the prosecution's attack progressed from sarcasm about her claimed anxious state<sup>24</sup> to a direct accusation that her shame is 'counterfeit',<sup>25</sup> that her actions were 'callous'<sup>26</sup> and that in fact she, like Ian, enjoyed the murders, a fact illustrated by the smiling photograph of her on Lesley Ann Downey's grave.<sup>27</sup> Thus, her emotions were portrayed as being misplaced and deviant and any suggestion of normal/human feeling was negated. This prosecution construction of her emotional state was in direct opposition to that which was claimed in her defence, and was finally contrasted with the normal, loving feelings she had for her dog.<sup>28</sup> This contrast emphasised her emotional inadequacy in relation to people. The prosecution's use of

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<sup>20</sup> N Naffine *'Law and the Sexes'* Sydney, Allen and Unwin (1990) Ch. 1 & 2.

<sup>21</sup> p6

<sup>22</sup> Fear also forms the substance of David Smith's justification for his involvement in the death of Edward.

<sup>23</sup> pages 86, 87, 89, 95, 105, 106, 114.

<sup>24</sup> p86

<sup>25</sup> p115

<sup>26</sup> p115

<sup>27</sup> p117

<sup>28</sup> 'You would have hit her more readily than you would have hit a dog.' p 110, see also p119.



emotions was responsive, that is it countered Myra's own normal, emotional construction, and sought to render any feelings she did express abnormal.

The prosecution adopted a similar approach in relation to Ian's cross-examination. Their cross-examination was the only occasion upon which emotions were attributed to Ian. However, as in their cross-examination of Myra, the emotions attributed to him were deviant. They were aberrant emotions grounded in cruelty. The prosecution's emotional construction of Ian was of deviant and monstrous masculinity:

'... morbid enjoyment of the trophies of your murder ...'<sup>29</sup>

'... revelling in it ...'<sup>30</sup>

'... the hideous satisfaction murder gives you ...'<sup>31</sup>

Alongside this construction of warped emotion, the prosecution maintained Ian's dearth of normal emotion:

'What were your feelings when you were striking this boy on the head with this axe? ... Certainly no emotions of pity ... Can you give any indication to the court of any kind of pity or compassion that you showed that boy that day?'<sup>32</sup>

'... kill without a conscious ...'<sup>33</sup>

'... not ashamed, you have indicated that?'<sup>34</sup>

Counsel went on to examine the body disposal plan,<sup>35</sup> emphasising its careful construction to illustrate Ian's self-possessed state of mind immediately after the murder and his cold and calculating nature. The resulting image of Ian was of a man, not only devoid of all *normal* responses, but as obtaining gruesome enjoyment from his

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<sup>29</sup> p4

<sup>30</sup> p9

<sup>31</sup> p33

<sup>32</sup> p8

<sup>33</sup> p31

<sup>34</sup> p46

<sup>35</sup> This plan, found during the investigation, details the method to be used to dispose of Edward's body.



murderous acts. The prosecution's approach to the emotional construction of Ian belies a more general approach which persisted throughout their cross-examinations, that was to twist and demonise the normality portrayed by Myra and Ian through their testimonies.

Ian's only defence to these claims was that he was 'out of control'.<sup>36</sup> Unlike Myra, he did not seek to *excuse* his actions but merely to explain within a masculine framework why these things happened. Through cross-examination he again attempted to explain his behaviour as a response provoked by the circumstances around him. In the case of Edward, Ian explained his actions were a response to his screaming, an attempt to silence him. In the case of Lesley Ann he explicitly maintained responsibility for the crimes to which he confesses:

'I was not ashamed at the time I took them (the photos) because I wanted to take them.'<sup>37</sup>

Through this approach Ian maintains his unemotional, masculine, status. This contrasts with Myra's normal emotional response. Yet in response to both these defensive techniques the prosecution attributes the defendants with *deviant* emotions.

Defence counsel did not employ the same constructions in relation to Ian and Myra. Emotion was construed predominantly as a feminine discourse and featured most heavily in relation to Myra as a means of both feminising her, and as explaining her criminality through her devotion to Ian. Ian was not attributed with, nor did he seek to attribute to himself, emotions in his defence. Rather he relied on the male explanation of provocation.<sup>38</sup> However, it is not clear from the transcript that the gendered associations of absence of emotion/masculinity and of emotion/femininity were consciously employed by Ian and Myra (and by counsel). Is it that they were *actively* constructing themselves (the defendants) in gendered terms, or were they merely *reflecting* societal constructions in the way they described and explained their behaviour? The relatively

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<sup>36</sup> p8

<sup>37</sup> p46

<sup>38</sup> The understanding of provocation is based on a masculine model of behaviour: see D Nicolson 'Telling Tales: gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2. 185.



minor status of emotions in the transcript and the hidden (not obvious), as opposed to express, nature of this discourse indicates that the construction of emotion in the trial was a reflection of the association of women/emotions and men/rationality in society and that counsel were merely reproducing that construction.

## **Relationships**

Like emotions, the discussion of relationships in the trial was to some extent gendered. The discussion of relationships was perhaps inevitable as Myra's relationship with Ian formed the foundation of her defence. Similarly, Ian's examination in chief was structured around his relationship with David and their partnership of complicity, as this formed the basis of his defence. Indeed all the players were contextualised with reference to relationships (see Appendix 4). However, whilst all four examinations in chief followed the same initial structure (first establishing the family relationships in which the witnesses are involved, for example mother / father / spouse / grandmother),<sup>39</sup> it is argued that the additional time devoted to the contextualisation of the women during their testimonies suggests that relationships were perceived to be more important in their testimonies than in the men's.

This is illustrated by the pattern of naming evident in the testimonies. For example, Maureen was identified as most associated with relationships and so it is unsurprising, therefore, that first names were predominantly used in her testimony, reflecting her close association with all the players. This proposition is supported by the tendency for the nature of the relationship to be identified in the naming, for example 'your sister' or 'your husband'. A similar pattern is evident, although to a lesser extent, in Myra's testimony, where Maureen was frequently referred to as Myra's sister. The importance of relationships in their testimonies is further enforced by the frequency with which names of relations featured. This is particularly striking in Maureen's testimony, for although the total of references to other family members equals that of Myra and David, hers was the shortest testimony.

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<sup>39</sup> For example, the contextualisation of David through the medium of relationships is achieved by locating him relationally with reference to the people he has lived with; first with his father and then with his mother-in-law. This process at the beginning of testimonies also serves the purpose of putting the witnesses at ease during the opening moments of their questioning: R DuCann *The Art of the Advocate* Harmondsworth, Penguin (1964) p99.



For the women, contextualisation in relationships served to portray them as 'normal'. For example, Maureen, who appears most 'normal' in terms of her conformity to traditional gender roles, shows the highest incidence of discussion of relationships. This argument is further supported by the high incidence of discussion of Myra and Ian's relationship in Ian's cross-examination by Myra's defence counsel. Through this cross-examination Myra's counsel attempted to explain Myra's behaviour through her relationship with Ian and to present her lifestyle as 'normal'. Thus, it is as much the way in which relationships were discussed as the amount they were discussed that reveals their positive effect on portrayals of normality. Presentation of the women involved in the trial as normal was achieved by including more information about the relationships themselves. The questioning of Myra and Maureen, pertained to the nature of relationships and friendships, whereas references during male testimony tended to be factual in nature, for example, stating that a relationship exists. This is best illustrated through the evidence in chief of Myra and Ian.

In the opening section of Ian's evidence a small amount of time was devoted to discussing his relationship with Myra. However, this was dealt with cursorily. Very little was said about their relationship and any details given were factual in nature. For example, that he met her at work and that she was his typist. This contrasts with the way in which their relationship was dealt with during Myra's testimony. Not only was her discussion of their relationship awarded more time and space, but it described the nature or form of the relationship; how it began and grew, its intensity and what it became, including her feelings for him. This is reflective of a more general trend in the testimonies of the women, whose evidence pertaining to relationships reflects a more personal approach, focusing on, for example, the closeness or attachment between two people.<sup>40</sup> This is relevant for Myra in two senses. It presented her within the expected range of behaviour of a woman and explained and defended her discordant behaviour in terms of her attachment to Ian.<sup>41</sup>

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<sup>40</sup> For example see p1 of the examination in chief of Maureen Smith dealing with her relationship with Myra.

<sup>41</sup> Women's criminal behaviour is often excused or explained with reference to their relationships with men: See N Naffine *'Female Crime: the construction of women in criminology'* Sydney, Allen and Unwin (1987) p49.



The cursory (male) approach is also evident in the way in which Ian's relationship with David was investigated during his examination in chief. Although establishing the relationship formed a major theme of the testimony, this is understandable as it was Ian's defence that the murder of Edward was an isolated event rather than one of a series, and this was dependent on establishing a friendship based on planning a number of crimes. However, the way in which this was done was similarly predominantly factual, addressing, for example, the frequency of visits rather than the nature or substance of the friendship. Only when Ian was attacked in his cross-examination by the prosecution did the nature of the friendship come into question; at this point it was used to impugn Ian's sexuality.<sup>42</sup>

The exploration of relationships and emotions in the trial is linked. Women (Maureen and Myra) were regarded as having emotional attachments to others. These emotional attachments were regarded as especially important for the women, they contextualised them, presenting them within a world defined by emotions and attachments. They also served to explain, in part, discordant behaviour, thus rendering the behaviour understandable within the 'feminine sphere' of emotions and relationships. It is argued, therefore, that both emotions and relationships were used in the portrayal of normality, but do not illustrate the deliberate exploitation of gendered norms in case construction, but the *reflection* of cultural norms and gender roles in the courtroom. In particular the portrayal and perception of relationships reflected the gendered beliefs about women<sup>43</sup> held by the players. The appearance of relationships as a producer of images of normality, rather than as a tool developed specifically to feminise Myra, is illustrated by the fact that both Myra and Maureen were contextualised by their relationships. In contrast, counsel did not contextualise Ian and David in the same way. For example, although during the opening of Ian's examination in chief relationships were discussed, references to relationships were mixed with other information and questioning. Moreover, compared to the female players, very little attention was paid to Ian's own relationships. In the light this and of recent work on the 'relational nature' of women,<sup>44</sup> it

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<sup>42</sup> See below: Recurring Patterns of Gender Construction: Ian Brady

<sup>43</sup> That women are regarded as relational or as concerned with relationships (See C Gilligan '*In a Different Voice: Psychological theory and women's development*' Cambridge, Mass, Harvard University Press (1993)) and that women who fail to make and maintain relationships may express their frustration through criminal acts : R Morris 'Female Delinquency and Relational Problems' *Social Forces* (1964) 43.

<sup>44</sup> C Gilligan '*In a Different Voice: psychological theory and women's development*' Cambridge, Mass, Harvard University Press (1993)



is suggested that contextualisation in terms of relationships was part of the process of presenting the female witnesses as normal. Myra was, therefore, portrayed in the context of ordinary relationships by the defence in their presentation of her as ‘normal’.

Relationships were also used in the trial as a tool for distancing or associating witnesses. Again, whilst this tactic was not predominantly concerned with gender construction, gendered stereotypes infiltrated the portrayals. The examinations in chief of the four main players (Ian, Myra, David and Maureen) were used by counsel to establish a nexus of friendship between them. These friendships were predominantly gendered in so far as they related woman/woman or man/man. This grouping served both prosecution and defence purposes.

Myra and her counsel used the gendered structure of the friendships to place her within a feminine sphere by describing her in relation to Maureen, indicating that she spent more time with her than with the men, thus removing her from the male domain which is the place where criminal complicity is typically deemed to occur. This is a pattern that is evident throughout her testimony. It is part of the process whereby Myra was placed in a ‘normal’ role and location (explored further below). Myra facilitated this several times by explicitly distancing herself from David, who represented the masculine sphere in her testimony, by indicating that there was some tension between them. Yet concurrently she was apparently careful to maintain a close association with Ian, referring to herself and him as ‘we’<sup>45</sup> and thus conveying unity. This was essential for her defence as she explained her minor involvement through her relationship with Ian. The tension between her and David confirmed the closeness of her relationship with Ian as she revealed that she felt a hint of jealousy, or annoyance with David’s interference with her and Ian’s relationship. This representation supported the construction of her relationship with Ian as ‘normal’. She appeared devoted, and this was used to explain her minor involvement in the (masculine) criminal behaviour. Yet she remained distant enough to remain ignorant of the plans made by Ian and David.

The association of Myra and Maureen by the defence was, however, also problematic as much of Maureen’s evidence *against* Myra rested on the strength of their relationship

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<sup>45</sup> Something which was not done in Ian’s testimony.



and their closeness. Consequently the prosecution, during Maureen's examination in chief, also focused upon this, devoting an opening passage to establishing their relationship as close, thus strengthening Maureen's insight and her reliability as a prosecution witness. A similar construction by the defence would strengthen the prosecution's evidence, therefore, whilst Myra's examination in chief confirmed her relationship with Maureen, this was restricted to when they were together in the group of four. Myra's counsel did not establish an individual relationship between them, but constructed their relationship as a bi-product of the male relationship between David and Ian. In addition, during his cross-examination of Maureen, Myra's defence counsel explicitly distanced her (Maureen) from Myra when addressing occasions when they are together on a one-to-one basis; for example, by referring to their mother as 'Myra's mother' several times, thereby attempting to disconnect their family association.<sup>46</sup>

The final effect of the grouping of four was to contrast the abnormality of Myra and Ian's relationship with the normal relationship of David and Maureen. Whereas Maureen and David were married, Ian and Myra were co-habiting. The different nature of their relationships was emphasised through David's testimony. Through the medium of relationships, and specifically the grouping of four, Myra and Ian appeared as an external destabilising influence which gave rise to a temporary aberration in the lives of David and Maureen. The questioning was initiated by establishing the 'normal' relationships between them and other members of the family. The focus then shifted to the escalation of the intensity of the relationship between the two couples. This progression was backed up by Maureen's testimony, which constructed a similar escalation. The friendships ultimately culminated in the death of Edward. However, the eventual effect of the murder was to re-establish the relationship between David and Maureen, which had, in the build up to the death of Edward, become distant. After the murder David again described himself in direct relation to his wife for the first time since the beginning of his testimony. This was especially evident in their calling the police together. It was through this sequencing and distancing of association (through which David and Maureen were portrayed as experiencing three stages to their relationship: normal - without the influence of Ian and Myra, abnormal - with Myra and

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<sup>46</sup> Eg cross-examination of Maureen Smith p18 and 12.



Ian's influence, and finally returning to normal again when David renounces them by calling the police) that Myra and Ian were rendered abnormal and disruptive, temporarily affecting those around them.

However, this active/passive construction of David's relationship with Ian and Myra was attacked in Ian's defence's cross-examination of him. Defence counsel constructed an alternative image of Ian and David acting in partnership in the murder of Edward, without the assistance of Myra. For example:

‘Did you and Brady together pull the body of Edward Evans from his position under the table?’<sup>47</sup>

‘Then you and Brady carried the body upstairs together?’<sup>48</sup>

Through this construction of David and Ian's relationship the role claimed for Myra by the prosecution was played by David. In response, David attempted to distance himself from Ian during the murder and to establish their relationship as hierarchical by claiming, for example, that he never spoke and was acting on Ian's orders.<sup>49</sup>

Like the opening examinations of the relational context of the witnesses (above) the constructions of the relationships between the four friends were predominantly motivated by the need to arrange the evidence to fit the theories of the case, not the desire to exploit gender stereotypes. Gender did, however, appear to inform counsel on the best way to shape the testimonies and evidence. For example the defence, perhaps unconsciously, included gendered norms of behaviour in its attempts to explain and portray Myra's behaviour through emotions and relationships, and to present her as 'normal'. By constructing a narrative based on normality the defence relied on everyday generalisations about women: that they are emotional and relational and their conduct can be explained through those media. By undermining these notions the prosecution presented an alternative portrayal of Myra as emotionally warped and challenged her use of her relationships to condemn her.

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<sup>47</sup> p20

<sup>48</sup> p21



### **Evidentiary Challenges to Myra's Femininity in the Prosecution Case**

There is unfortunately little of the relevant prosecution case available, only the testimonies of David and Maureen. However, it was evident through these testimonies that the prosecution did not actively seek to construct Myra in a particular way. The available evidence illustrated the incongruity of her crimes with notions of femininity and the prosecution seemed largely content to rely upon this without drawing explicitly on the issues of gender thrown up by the evidence. The prosecution only engaged in positive or purposeful gender construction during their cross-examination of Myra and Ian in the latter half of the trial. This indicates that gender, specifically femininity, was not a theme pertaining to their narrative but was a mechanism used to rebut attempts by the defence to construct Myra's normality and femininity.

The presumption of Myra's dearth of femininity at the outset of the trial was well established by the time Ian and Myra took the stand; through their notoriety as a result of media reporting of the case and, of course, through the evidence of criminality that challenged Myra's femininity. Thus, her femininity was implicitly challenged by prosecution evidence. For example, her involvement in the killing of Edward whose body was found in her house was highlighted. David quoted her as saying shortly after the killing:

‘You should have seen the look on his face, the blow registered in his eyes.’<sup>50</sup>

A second evidentiary challenge to Myra's femininity was her apparent inhumanity, something which was obviously raised by her involvement in the crimes with which she was charged, and which was compounded by both the reported enjoyment she experienced in the death of Edward and the severity of her treatment of Lesley Ann. The latter was evident from the audio recording of the stripping of Lesley Ann, a vital piece of prosecution evidence.

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<sup>49</sup> p20

<sup>50</sup> David Smith, examination in chief p15.



Throughout the available prosecutory testimonies, however, there was no persistent, consciously constructed challenge to Myra's femininity, it was self-evident through the descriptions given by witnesses and through other evidence. Her lack of conventional femininity was revealed, for example, through revelations that her life was full of abnormalities, from the most minor, that she, as opposed to Ian, was the driver and owner of 'their' car, to the more obvious and discordant, that she was the owner of a cosh and two guns.

The defence, in response sought to counter this evidence during their cross-examination of the prosecution witnesses. This did not, however, seem to centre upon re-establishing Myra's femininity, rather it was predominantly a question of character. For example, they countered the 'self-evident' inhumanity with examples of humanity. A stark illustration of this contradiction of inhumanity with humanity was provided by Myra's counsel's cross-examination of David. During his testimony, David claimed that a cosh held in evidence belonged to Myra. This revelation was immediately followed, and thus countered, by the defence directing questioning to the time when a caring Myra tried to save the life of the Smiths' dog. It is during the questioning of David that the defence most frequently addressed incidents during which Myra has appeared helpful and humane, perhaps due to the strength of his evidence for the prosecution and the degree of inhumanity he described. Examples exploited by the defence included Myra's assistance in finding accommodation for the Smiths shortly after their marriage, the wedding present she provided for them in the form of a trip to the Lake District, her (and Ian's) invitation to them to stay for the weekend after the death of their baby and taking Myra's grandmother to her uncle's house in order to accommodate the Smiths that weekend.<sup>51</sup> This is a basic technique designed to improve the jury's perception of the defendant.

Thus, the defence, during their cross-examination of the prosecution witnesses, like the prosecution in the examinations in chief, did not seek to raise femininity as a major issue. Femininity was, as examined above in relation to relationships and emotions, a minor and frequently sub-conscious 'theme' during the prosecution case. Although much of the evidence did implicitly challenge Myra's femininity this was not exploited.

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<sup>51</sup> All in Myra's counsel's cross-examinations of David Smith.



## The Construction of Myra in the Defence Case

It was not until both Ian and Myra's testimonies that the first explicit, positive construction of Myra as either feminine or unfeminine was evident, as opposed to the subtle, often 'reflective' construction<sup>52</sup> that took place elsewhere the trial. The apparently sub-conscious use of gender in relation to relationships and emotions continued to be present in the defence testimonies, however, more concrete and positive constructions of femininity also emerged. It is not evident, however, that these constructions constituted a 'theme' in the sense described in chapter two. Whilst they are clearly evident, they had not been selected by counsel for emphasis. The constructions were of Myra and Ian's making, and featured as part of their endeavour to present Myra as 'normal'. It should be noted that Myra and Ian were not necessarily seeking to present Myra as 'feminine', but to present her within normal terms, reflecting the behaviour of women in society more generally. In the defensive testimonies the process of making Myra 'normal', which was hinted at by counsel in the cross-examination of the prosecution witnesses, was therefore crystallised.

However, Myra's defensive construction of normality, which supported her and Ian's version of events by construing their relationship within normal terms, continued to be limited by the strength of the evidence against her which she had to account for without harming Ian's case. Further, in spite of their efforts to portray her normality, her allegiance to Ian and his values and ideologies limited the extent to which she could be portrayed as 'normal'. This is evident from the commencement of her testimony when she refuses to swear the religious based oath. This not only challenged her normality, but was an apparent rejection of the court process and all that it stands for.<sup>53</sup> This apparent expression of opposition to the criminal justice process was compounded by her and Ian's physical location in the dock throughout the trial, which was isolated, elevated and in direct opposition to the judge.<sup>54</sup> This was exaggerated in Myra and Ian's

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<sup>52</sup> Reflective of wider societal norms.

<sup>53</sup> P Goodrich *'Languages of Law: from logics of memory to nomadic masks'* Weinfield and Nicolson: London (1990) p231.

<sup>54</sup> See Ch 2 and T Sargant and P Hill *'Criminal Trials; the search for truth'* Fabian Research Series No 348 Oct (1986) Ch1.



trial as their segregation was confirmed and exacerbated because the dock was surrounded by bullet-proof glass.

In spite of these difficulties, Myra's defence counsel sought to construct Myra's normality through his examination of both Myra and Ian. Both Myra and Ian's testimonies were closely controlled by defence counsel, questions were framed to demand only short answers. This indicates that counsel participated in constructing events, shaping their questions to ensure appropriate responses. However, it should be noted that the information from which counsel work and on which they base questions, and thus constructions, was itself a fabrication by the defendants designed in the hope they would be found innocent. Thus the construction of 'normality' portrayed through the testimonies was of both the defendants and counsel's making. This construction was achieved in three ways. First, there was the feminisation of her behaviour, both everyday and in response to the events surrounding the murders. Secondly there was the adoption and application of the specifically feminine role of maternity and finally the construction of her as passive and subordinate.

The portrayal of Myra and Ian's life as normal was attempted through the inclusion in their testimonies of detailed description, particularly by Ian, of ordinary surroundings and events. This description placed them within the parameters of 'ordinariness' that might be expected by observers.<sup>55</sup> The subtlety of this construction, compared to the more obvious construction of Rose West, indicates that Myra and Ian and Myra's defence counsel were not adopting techniques of feminisation per se, but that femininity and feminine behaviour featured in their understanding of normality. Thus, through the testimonies, Myra was described by both defendants as exhibiting traditionally female behaviour and inhabiting traditionally female realms, both of which were challenged by the prosecution as they resisted the construction of her normality.

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<sup>55</sup> S Edwards : *'Women on Trial: a study of the female suspect, defendant and offender in the criminal law and criminal justice process'* Manchester. Manchester University Press (1984) Ch.6, also see H Allen *'Rendering them Harmless'* (in P Carlen and A Worrall *'Gender Crime and Justice'* (Oxford, OUP (1987)) in which it is observed that women are described in pre-sentence reports in terms of domesticity in order to alter others' perceptions of their lives.



Through Ian's testimony, Myra was constantly placed outside the acutely masculine and criminal<sup>56</sup> relationship shared by himself and David and thus removed from masculine spheres. Instead, Myra was transported into a feminine realm in which she appeared mainly in the kitchen, providing tea.<sup>57</sup> Here she obeyed Ian's commands and was excluded from and ignorant of Ian and David's plans. A similar method was adopted by Myra who also described herself in terms of the 'normal' (feminine) and removed herself from the masculine realm inhabited by Ian and David. Thus, in the prelude to the death of Edward, she described herself in relation to her sister as much, if not more, than in relation to Ian. She recounted in detail the conversation she had with Maureen about shoes, hair and their mother thus portraying female normality. More literally, following Ian's lead in his testimony, Myra placed herself outside the vicinity of Edward's killing. She too placed herself in the kitchen where she appeared to remain for the majority of the evening, thus attempting to remove herself from direct responsibility.<sup>58</sup>

Through the removal of Myra from the masculine sphere her only connection to the crimes she was charged with was through her subordinate relationship with Ian; he demanded that she helped in the aftermath and she obeyed. Through this construction, her role became secondary and her offending was explained thereafter through her inappropriate and damaging relationship with Ian. This defensive tactic is not uncommon among female offenders and is supported by notions of subordinate and passive femininity.<sup>59</sup>

Her secondary, subordinate role was, however, challenged in the prosecution's cross-examination of Ian.<sup>60</sup> Not only were both versions (Ian and Myra's) of her relegation from the masculine sphere directly contradicted by David's evidence, it was established

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<sup>56</sup> Being structured around planning robberies.

<sup>57</sup> The perception of women's place in the private realm has been frequently observed. For example, criminological theory has accounted for women's lesser criminality with reference to her domestic, private role, which divorces women from the masculine world, including criminality, see T Parsons *'Essays in Sociological Theory'* Glencoe Illinois, Free Press (1954).

<sup>58</sup> This placement of Myra in feminine realms is similar to the placement of Kiranjit Ahluwalia away from the events leading up to the death of her husband Deepak as observed by Nicolson in: 'D Nicolson 'Telling Tales: gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2, 185.

<sup>59</sup> H Kennedy notes the well used defence of the woman seduced into crime by her partner: *'Eve Was Framed: women and British justice'* London, Vintage (1993) Ch 3.

<sup>60</sup> This was also challenged in the prosecution's cross examination of Myra, see below.



that certain objects connected Myra directly to the murder: her shorthand-book was used to develop the body disposal plan; the guns that were going to be carried during the burial were licensed to her; the ticket for the locker in which incriminating evidence was stored was kept in the spine of her prayer book; and it was Myra who suggested that the body should be transported in a pram. Most importantly, however, Myra was to be the 'driver for the exercise'.<sup>61</sup>

In addition to removing Myra from the locality of the murder and into the feminine realm of the kitchen, the defensive testimonies portrayed her normal feminine behaviour. This was most evident in both her and Ian's descriptions of her response to the events surrounding the deaths of Edward and Lesley Ann. On these occasions her normality and thus her femininity was most challenged, both implicitly by the evidence and expressly by prosecution counsel. Ian described Myra's reaction to the death of Edward in typically female, 'emotional'<sup>62</sup> terms:

'... she became over-wrought, hysterical,'<sup>63</sup>

'Myra was going off her head ...'<sup>64</sup>

'Myra said she could do with some whiskey because she was feeling faint, she had been sick earlier on'.<sup>65</sup>

Her account mirrored this. She described herself as stopping dead in the doorway, putting her hands over her ears and running into the kitchen, thus regaining the security of the feminine realm. Such a response portrays panic and shock; an emotion which was also employed in Myra's account of the death of Lesley Ann in order to justify or explain her unfeminine cruelty. After the murder her panic turned into 'typically' female 'fussing' and Myra described herself as having been unable to sleep and as constantly tidying up. Thus, in order to explain and justify her involvement, her account portrays her as having been in shock, unable to cope with the reality of what happened.

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<sup>61</sup> 'Exercise' being the planned murders : cross-examination by the prosecution p26, also see below.

<sup>62</sup> See C Gilligan *'In a Different Voice: psychological theory and women's development'* Cambridge, Mass, Harvard University Press (1993).

<sup>63</sup> Ian's examination in chief p7.

<sup>64</sup> p8

<sup>65</sup> p9



This construction of Myra's feminine reaction to the murders was systematically attacked in her cross-examination. In doing so the prosecution used the most powerful piece of evidence available, the audio tape of the stripping of Lesley Ann<sup>66</sup> and the photographs of her posing naked. The transcript of the tape provided a vehicle through which Myra's cruelty was illustrated, thus implicitly undermining the feminine normality she and Ian had previously presented. This examination of the transcript forms a substantial portion of her cross-examination, two thirds, as compared to only one third in Ian's cross-examination. Moreover, not only is it more extensive but it is more powerful in undermining her normality than examinations of her involvement in Edward's murder. The amount of time devoted to the tape-transcript alone illustrates its importance in both implicating her directly in the murder and in undermining her normality/femininity. The prosecution, during the cross-examination, took Myra through the transcript of the recording page by page, spending a great deal of time quoting Lesley Ann's pleas, dissecting Myra's responses, demanding explanation and emphasising her cruelty. Cruelty thus became a means of both undermining Myra's normality and directly impugning her femininity.

### **Active Feminisation?**

#### **Maternity**

Whilst feminine space and feminine behaviour were employed predominantly with the purpose of portraying Myra as 'normal' it was through the theme of maternity that defence counsel became more active in the feminisation of Myra. The discourse is based on the presumption of the 'natural' role of women in relation to children.<sup>67</sup> Its use by the defence in the trial was a modification of the drive to portray Myra as normal, it was part of the construction of her character. The use of character evidence in trials is restricted (evidence may not be heard unless the issue of character is raised by the defence<sup>68</sup>), however, evidence of character often seeps into the courtroom indirectly,

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<sup>66</sup> Which is played once and the transcript of which is examined in detail.

<sup>67</sup> See Ch 2.

<sup>68</sup> Criminal Evidence Act 1898 section 1.



thereby escaping the exclusionary rule.<sup>69</sup> In this case allusions to character were made by both the defence and prosecution. The effect of good character evidence is dual, it may be perceived by the jury to indicate veracity and it may reduce, in the minds of the jury, the strength of the prosecution's claim. In the instant case maternity was the means through which the defence sought to establish Myra's good character. Hence maternity featured heavily in Myra's examination in chief as her relationship with both Pat Hodges, her young neighbour, and with Lesley Ann was explored.

For the defence, drawing on maternity was a method of feminising Myra within the confines of 'normal women', one of whose features is maternity.<sup>70</sup> This was achieved predominantly through her friendship with Pat but also by feminising, and thus mitigating, her involvement in photographing Lesley Ann. The role constructed for Myra by Myra herself, Ian, and by defence counsel, in relation to Lesley Ann was that of 'placator'.<sup>71</sup> According to Myra's testimony, at the request of Ian, and in spite of her objections, Myra was present in the room during the photography merely to put Lesley Ann 'at ease';<sup>72</sup> a task presumably deemed fitting due to her gender. In addition, her examination in chief was woven with references to Pat who appears as a symbol of Myra's safety, illustrating that she is able to relate normally to children and to maintain friendships with them and most importantly that, despite numerous opportunities to harm her, Pat remained unharmed. Both children were thus used in an attempt to illustrate Myra's safety and as examples of her feminine caring.

The importance of the discourse of maternity in the defence of Myra was further illustrated by the earlier attack on Maureen, a strong witness for the prosecution, which revolved around Maureen's maternity (below). The attack on Maureen's femininity served two purposes for the defence. First, it boosted the construction of Myra's femininity by destroying the comparative feminine 'norm' provided by Maureen. The assertion of Myra's femininity, which followed Maureen's examination and cross-examination, was made against the background of this attack and so the gap between the

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<sup>69</sup> M Childs *The Character of the Accused* in M Childs and L Ellison *Feminist Perspectives on Evidence* London, Cavendish (2000).

<sup>70</sup> See Ch 2.

<sup>71</sup> Placator is a term adopted frequently by Ian in his testimony.

<sup>72</sup> Myra's examination in chief p33.



seemingly appropriate femininity of Maureen and the dearth of Myra's femininity was closed. Secondly it undermined the character of an important prosecution witness.

The defence's attack on Maureen was based on her inadequacy in the performance of her caring role in relation to her own child. This was rendered more poignant by the fact that at the time of the trial Maureen was nine months pregnant. The importance attached to the discourse of maternity in the testimonies of the two women is illustrated by the disproportionately high number of references to Maureen's first child by Myra's counsel and the concentration on the baby in Maureen's testimony but not in her husband David's (see Appendix 5 and 6).

The basis for the attack on Maureen's femininity focused upon her inadequacy as a mother. It was through the heavy emphasis of her willingness to leave the baby and the private realm in order to enter the masculine public realm that this construction was facilitated: she was described as having developed the 'habit from very early on' of leaving her baby with her mother and going to the pub with her husband.<sup>73</sup> This point was re-iterated several times by the defence: it was a 'regular haunt';<sup>74</sup> they went 'regularly'.<sup>75</sup> The public nature of pubs and their association with the masculine realm makes them implicitly unfeminine and the women who frequent them subject to criticism on that basis. For example, one judge is quoted as saying 'She is not a young innocent girl straight off the boat from Ireland. She has worked in and around pubs.'<sup>76</sup> This stereotype was exploited by Myra's defence in conjunction with her willingness to leave her baby in order to go to the pub 'from when the child was very very young';<sup>77</sup> leaving the child was 'regular procedure';<sup>78</sup> she left it 'all night and the whole of the next morning and asked if you could leave it that night'.<sup>79</sup> Not only was Maureen's parenting questioned, she was also made to look selfish in that her mother was ...

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<sup>73</sup> Cross examination by Myra's counsel p14.

<sup>74</sup> p14

<sup>75</sup> p11

<sup>76</sup> This judge featured in an observational study of rape trials: S Lees *'Ruling Passions: Sexual violence, reputation and the law'* Buckingham, OUP (1997), p66.

<sup>77</sup> p15

<sup>78</sup> p15

<sup>79</sup> p15



‘... reluctant to have the baby. She was working and rather tired, so didn’t want a tiny baby ... Despite that she took the baby, you had to persuade her.’<sup>80</sup>

Thus, not only had Maureen failed the test of motherhood<sup>81</sup> but she had chosen to enter the masculine sphere of a public house - a less than suitable place for a respectable woman (at least in the eyes of some in the 1960s). This contrasted with and thus fortified the defence’s construction of Myra as inhabiting only feminine realms and as excluded from masculine spheres.

However, perhaps inevitably, despite the dual tactic of constructing Myra within the discourse of maternity and her sister as an inadequate mother, maternity was most powerfully used by the prosecution against Myra. During their cross-examination of both Myra and Ian the prosecution used maternity to illustrate Myra’s dearth of femininity and to emphasise her unnatural/unwomanly cruelty. Thus, the feeble attempt by the defence and by Myra and Ian to normalise and feminise her via this construction is what paradoxically provided the prosecution with a discourse with which to defeminise her. They needed only to quote the transcript of the tape-recording of Lesley Ann to reveal that Myra’s role as placator was at best tenuous:

‘You are all right. Hush, hush. Put it in your mouth. Hush, shove that in ... Shut up or I’ll forget myself and hit you one.’<sup>82</sup>

This was used to illustrate Myra’s twisted maternity which abused proper standards of femininity to lull victims into a false sense of security. This is woman at her worst; cruel and cunning, willing to hide behind and to exploit her femininity. This contrast between feminine maternity, as portrayed by the defence, and Myra’s cruelty reached its climax when Lesley Ann appealed to Myra, calling her ‘Mum’. This appellation was seized upon by the prosecution as they confirmed the absence of Myra’s femininity:

‘Trying to appeal to some maternal instincts in her (Myra) ... At any rate the response of Myra Hindley is to say ‘shut up, is it not?’<sup>83</sup>

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<sup>80</sup> p15

<sup>81</sup> See constructions of women as ‘carer’ Ch 2.

<sup>82</sup> p43

<sup>83</sup> p43



## Passivity

The dualistic approach to gender construction discussed in chapter two is observable throughout the defence case.<sup>84</sup> The assumption of the otherness of woman facilitated the final gendered theme observable in the trial. The inclusion of the male/female dualism enabled the construction of Myra and Ian's relationship in 'normal' terms in-so-far-as Ian was dominant and Myra subservient. Use of such a construction by the defence allowed Myra to be presented to the court as passive, something which formed a crucial part of her defence. The prosecution, by failing to challenge the presentation of Myra's gender at a deeper level,<sup>85</sup> allowed this defence to be raised. Furthermore, they accepted her passivity to a limited extent.

The use of passivity has been identified as a tool frequently adopted in the criminal justice system as a means of explaining or mitigating women's involvement in crime.<sup>86</sup> Unlike cases of male criminality, which assume uncomplicated responsibility for offences, examinations of responses to female offending reveal the reconstitution of events as beyond the control of the female offender.<sup>87</sup> The consequence of such a reconstruction of offending is the removal of agency and thus blame from the female offender. This assumption endows women with a lack of agency on the basis of which they can be excused and/or receive mitigation, and/or be treated through psychiatric disposal. It is evident that the removal of agency through passivity is a discourse which featured in support of the defence's general feminisation of Myra, which has so far been evidenced through her portrayal as 'normal' and the use of the discourse of maternity. It is argued that the use of these feminine and 'normal' discourses were included in the interpretation of the evidence by the defence to aid or facilitate the acceptance of Ian and Myra's version of events. By portraying their lives as 'normal' (which includes normal gender roles) it was hoped that they would be perceived as unlikely to have

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<sup>84</sup> See 'The Non-Application of Masculine Discourses to Myra Hindley', below.

<sup>85</sup> Masculine discourses are not applied to Myra. See below; 'The Absence of the Application of Masculine Discourses to Myra'.

<sup>86</sup> Eg A Worrall *'Offending Women'* London, Routledge (1990), Ch 5.

<sup>87</sup> Explanations for women's offending include, for example, the tendency for women's criminal behaviour to be explained either through internal, emotional factors or their association with men.



committed the abnormal offences. In particular, Myra's feminine normality placed her outside of the criminality which Ian described as his and David's.

Thus a key element to Myra's defence was that she was unaware of Ian and David's plans and that, when she became involved in the events surrounding the admitted dealings with Edward and Lesley Ann, she was passive, she lacked agency, and ultimately, therefore, that she should be exonerated in the light of her subservient relationship to Ian.<sup>88</sup> This construction of her involvement by herself and Ian, and by defence counsel, obviously reflected society's construction of unequal, gendered relationships. Thus, the reflection of this societal norm in the depiction of their own relationship both maintained the portrayal of their relationship within the boundaries of normality and drew on a gendered generalisation that explained and excused Myra's involvement. Through the discourse of Ian's power and her powerlessness, Myra and her defence sought to limit, excuse or justify her involvement. Unlike the more subtle discourses that construct Myra's normality, maternity and passivity were more consciously employed. However, whilst they were used for their value in terms of character and explaining the evidence, it is not clear whether their gendered nature and their specific association with femininity was acknowledged.

The process of Myra's construction as passive was instigated at the beginning of her defence counsel's cross-examination of Ian. The first line of questioning was about his domination of Myra, to which he (Ian) readily admitted. Ian's dominance was communicated explicitly through statements such as 'I told her to keep her mouth shut'<sup>89</sup> and 'I balled Myra out for interrupting'.<sup>90</sup> It was also conveyed implicitly through, for example, what appears to be a subconscious use of the word 'told' instead of 'asked' throughout the testimony. Through this use of language Ian betrayed his dominance over Myra and challenged the idea that she might have had either a choice or freewill. This trend was consistently evident in each examination of Ian.

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Allen describes this reconstitution as a 'natural disaster': H Allen '*Rendering them Harmless*' in P Carlen and A Worrall '*Gender Crime and Justice*' Oxford, OUP (1987).

<sup>88</sup> These are both themes which have grown in strength and now form the basis for Myra's pleas for release.

<sup>89</sup> p18

<sup>90</sup> p3



Myra's subordination was maintained during her examination in chief even though her defence counsel did not address it explicitly. In contrast, in Ian's testimony, counsel did not ask specifically about her powerlessness, but the implication was that she was unaware of her subordination. Consequently, her powerlessness was magnified; for the powerless are rendered less powerful through ignorance of their subordination. Instead, throughout her examination in chief, Myra's powerlessness was transformed into a concept of loyalty to Ian.<sup>91</sup> The consequence of such an approach is that whilst loyalty continued to provide a justification for her actions it became positive as an expression of traditionally feminine selflessness (as opposed to powerlessness which is negative). Further, loyalty, unlike subordination was something with which she could readily identify without jeopardising the construction of her powerlessness. Through the discourse of loyalty Myra's subordination appeared 'natural' rather than manufactured.

The theme of loyalty was raised initially in the context of the police interviews:

'It was quite clear that you (Myra) were asking the whole time about Ian and what they were going to do with Ian ...'<sup>92</sup>

This theme was maintained by Myra throughout her cross-examination as she explained her inactivity as a wish to protect and support Ian and her involvement through her obedience to him.

This construction of Myra's powerlessness as loyalty was supported by Ian's testimony, which embodied the complementary male discourse of chivalry. It was evident through his evidence that he acted chivalrously toward Myra; implicitly in his protection of her by lying about the extent of her involvement in the killings, possibly to his own detriment, and explicitly through a number of statements which expressed his desire to shield her:

'As soon as Myra was arrested I stopped co-operating with the police, as far as I was concerned that was it.'<sup>93</sup>

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<sup>91</sup> The adoption of a discourse of loyalty in excusing the criminal actions of women through the removal of agency is a trend noted by feminist criminologists. A Worrall *'Offending Women'* London, Routledge (1990) p.35 .

<sup>92</sup> Myra's examination in chief p74.



‘It was the allegations about Myra which were annoying me more than anything else.’<sup>94</sup>

Thus, Myra and Ian were constructed by the defence and by themselves in terms of dualistic notions of masculine and feminine and Myra’s loyalty, when seen in conjunction with the complementary male parallel of chivalry, was portrayed as normal.

However, the prosecution twisted her loyalty to reveal it as something ugly rather than as a something which explained or justified her behaviour. Thus her loyalty was contrasted with her disregard for any duty towards the victims. This transformed Myra’s self-sacrifice into a selfish need for Ian and thus self-indulgence and at the same time illustrated her lack of feminine feeling and concern for the child victims:

‘You were not worried about this boy, it was about Brady you were worried.’<sup>95</sup>

The defence’s construction of Myra’s subordinate relationship with Ian provided the platform from which her lack of agency was launched. During her examination in chief this took the form of her finding herself in situations created by Ian and David and, due to her subordination, unable to object. It is this section of the transcript that Myra appears most submissive and almost pitiful:

Myra: ‘Ian wanted me there so I agreed’<sup>96</sup>

Myra: ‘He asked me to do some things and if I objected, we argued, and I would eventually go along with him.’

Defence counsel ‘Miss Hindley, why?’

Myra: ‘I just did.’<sup>97</sup>

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<sup>93</sup> Cross-examination by the prosecution p31.

<sup>94</sup> Ian’s examination in chief p21.

<sup>95</sup> Cross-examination of Myra by the prosecution p86.

<sup>96</sup> Myra’s examination in chief p76.

<sup>97</sup> Myra’s examination in chief p81



The key to this construction is the disappearance of agency on the part of Myra, rendering her both less responsible and less blameworthy.

The prosecution challenged Myra's loyalty, subordination and lack of agency. The grouping of four, identified above, was exploited to undermine her defence of subordination. This was clearly evident in the examination in chief of Maureen and David. First, Myra was portrayed as active in the group. For example, she was noted to be the driver during their outings. In contrast, Maureen appeared as an appendage. For example, the group of four in David's testimony were referred to by the prosecution as 'you (David), the two accused and your wife ...'<sup>98</sup>, thus minimising Maureen's status and maximising Myra's. Secondly, the grouping of four was used to minimise the impact of Myra's defence based on her relationship with Ian. By shifting the focus of Myra's relationships from that with Ian to that with the others in the run up to Edward's death, Myra's relationship with Ian played a minor role and so attention was deflected from the subordinate relationship constructed by the defence. The absence of references to their relationship in the lead up to the death of Edward was accentuated by their later unification through the murder as described in David's testimony.<sup>99</sup> Only at this time did they appear to be operating as a couple, during which Myra was portrayed in an active role, thus undermining her claims to passivity. At the same time, however, details of the murder indicated that their union was not normal and consequently the relationship that was established by the prosecution was portrayed as both equal, thus undermining Myra's defence of subordination, and deviant. This is confirmed when it is compared to the unification of Maureen and David after the murder. Their behaviour and relationship exemplified 'normality'; Maureen was at home waiting for David, she made him a cup of tea on his return, he confessed the horrors of what he has seen to her and together they alerted the police.

This attack on Myra's defence continued in her cross-examination, during which her relationship with Ian and her devotion to him were again used to present them as united and equal during Edward's murder:

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<sup>98</sup> p2, also see p3, p6, p13.

<sup>99</sup> David describes Myra and Ian as apparently co-operating during the murder and as united in its aftermath.



‘You were at his side when he was hammering the boy’s head with a hatchet’<sup>100</sup>

And to rebut her claim of ignorance:

‘Your association with the accused was a particularly close and intimate one ...  
You were devoted to each-other ... There were no secrets you guarded from each-  
other ... ?’<sup>101</sup>

However, the prosecution’s treatment of Myra was nonetheless different to that of Ian. Ian was unequivocally held responsible for the *positive* steps he took in the killings whereas Myra was questioned in relation to her *omission* to assist the victims or to report Ian to the police. Ian’s responsibility for his actions was clear: ‘the boy you killed, you struck, the blows you inflicted, you did this’.<sup>102</sup> Myra’s responsibility was constructed as less direct, focusing primarily on what she *allowed* to happen to Lesley Anne. This in spite of evidence from David’s testimony and the recording of Lesley Anne. Myra, unlike Ian, was given the opportunity by the prosecution to explain or excuse her behaviour. She was asked specifically ‘what excuse do you have?’<sup>103</sup> This contrasts with the questioning of Ian: ‘there was never the slightest justification or excuse for striking that boy with the axe, was there?’<sup>104</sup> This allowance was perhaps explained through the prosecution’s inability to divorce itself from gendered norms which showed itself through the apparent conflict between assumptions or generalisations about femininity and the desire to resist and counter such constructions.

Neither Myra or Ian attempted to justify their actions in direct response to these questions, although both attempted to offer explanations for their behaviour in other areas of their testimony. Myra attempted this justification more than Ian, predominantly relying on fear to explain her behaviour. Ian rationalised his attack on Edward as loss of control in response to an attack on him by Edward, and an effort to silence him to explain his actions. This explanation of his actions corresponds with the masculine based model of the defence of provocation.<sup>105</sup> Myra’s, response was based around

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<sup>100</sup> p82

<sup>101</sup> p88

<sup>102</sup> p5-9

<sup>103</sup> p105

<sup>104</sup> p9

<sup>105</sup> Supra No 38.



emotions; namely, her love of and dependence on Ian. Furthermore, Myra, throughout her testimony, submitted to her guilt in a way that Ian refused. She lamented her failure to help the victims and her own cruelty; this too was an emotional (feminine) response:

‘I have no defence ... It is indefensible, I was cruel ... There is no defence for what I did ... I think it was cruel, criminal, I am ashamed.’<sup>106</sup>

Such repentance was a further method of feminisation adopted in order to mitigate blame. It is important to note, however, that Myra’s acceptance of responsibility was limited to those actions that conform to the passive role she and Ian constructed for her. In the context of the tape transcript, during periods when things said or done are cruel, for example, harsh words to Lesley Ann, or which unequivocally challenged her femininity, for example, failure to respond to Lesley Ann’s pleas for help, Myra denied being present. In relation to Edward, she denied knowledge of the plan and denied hearing his screams.

However, despite their limited acceptance of Myra’s passivity, the prosecution did on occasions challenge the passive image offered. They presented an alternative portrayal and sought to emphasise her active role in the killings.

‘You were the woman who had driven the car that had bought him (Edward) there, it was your house’<sup>107</sup>

‘You would have been co-operating willingly’<sup>108</sup>

‘... a perfectly willing co-operator in that kind of activity’<sup>109</sup>

It should be noted, however, that Myra is cast here in the role of ‘co-operator’ and thus was not regarded as an equal in the crimes. Prosecution counsel expressed disbelief in response to her claims of ignorance and inactivity:<sup>110</sup>

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<sup>106</sup> p105

<sup>107</sup> p94

<sup>108</sup> p95

<sup>109</sup> p95

<sup>110</sup> This is a ‘destructive’ form of cross-examination, a form which involves destroying the opposition case. Constructive cross-examination involves building on the opposition case to alter its meaning or offering an alternative case: M Stone *‘Proof of Fact in Criminal Trials’* W Green and Son Ltd Edinburgh



‘Did it not occur to you for one moment ‘My goodness! I wonder if that was the little girl who was gagged in my house and photographed naked?’<sup>111</sup>

The most powerful tool available to the prosecution to illustrate Myra’s active role was the tape recording of Lesley Ann which they exploited, devoting two thirds of Myra’s cross-examination to discussion and quotation which revealed her participation in the stripping and gagging. The combination of these attacks, based on strong evidence, highlighted the improbability of the defence narrative and undermined Myra’s feminine portrayal.

The second means of undermining Myra’s passivity was to challenge the demure, apologetic and subordinate demeanour which she presented to the court during her testimony. This image of passivity was portrayed to the court through her claims of shame and regret through which she lamented her involvement and thus appeared to submit to the court. However, this image was undermined in two ways. Firstly, it is reported that her demeanour during the proceedings was *too* calm, her appearance *too* smart and her face *too* devoid of emotion to support her dialogue, and that she was in fact perceived to be callous.<sup>112</sup> An alternative perception of this behaviour would be that it was a show of dignity and obedience to the court rules. Similarly, however, the dignity and composure of Louie Calvert in her trial and execution was interpreted as unfeminine coldness.<sup>113</sup> Secondly, Myra refused to take the religious oath. Whilst she was entitled to do this, it is argued that to refuse is symbolically to reject the court process.<sup>114</sup>

The prosecution built on this in two ways. First, by revealing her different, aggressive demeanour during the police interviews. During these interviews Myra argued with the police, refused to answer their questions and was disrespectful of the investigatory process:

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(1984) Ch 15.

<sup>111</sup> p100

<sup>112</sup> Dobash, Dobash and Noaks ‘*Gender and Crime*’ University of Wales Press (1995) p122

<sup>113</sup> A Ballinger ‘*Dead Woman Walking: executed women in England and Wales 1900-1955*’ Ashgate, Aldershot (2000), 141.

<sup>114</sup> P Goodrich ‘*Languages of Law: from logics of memory to nomadic masks*’ Weinfield and Nicolson: London (1990) p231.



‘I am not talking anymore about it’<sup>115</sup>

‘I am not saying’<sup>116</sup>

‘I have told you before ... I am not saying anything ...’<sup>117</sup>

She was even sarcastic to them:

‘I suppose he (David Smith) told you that he sat on the chair looking benevolently down.’<sup>118</sup>

Secondly, the prosecution sought to support this alternative construction of her nature by employing provocative tactics throughout the cross-examination in order to elicit an aggressive response. During her testimony Myra maintained a speech form which, whilst not being a powerless speech form (which would for example contain hedges (e.g. ‘sort of’) or super-polite language<sup>119</sup>) was not aggressive. Maintaining this ‘powerful’ speech form, it has been found,<sup>120</sup> means that the speaker is more likely to be believed. However, in trials such as this powerful speech may appear discordant with portrayals of passivity. In contrast, in her trial Rose West adopts a powerless speech form.<sup>121</sup> In order to compound the incongruity of Myra’s speech form and dialogue the prosecution sought to elicit an aggressive response from her. They were sarcastic, periodically aggressive and occasionally patronising. Whilst Myra generally maintained a neutral response there were times when this was threatened by her testimony:

Prosecution counsel:      ‘(you) had the same ideas as Brady?’

Myra:                              ‘Obviously not, he was going to rob a bank.’<sup>122</sup>

Prosecution counsel:      ‘Let me tell you what in fact you did say – may I?’

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<sup>115</sup> The prosecution quoting Myra: cross-examination p91.

<sup>116</sup> The prosecution quoting Myra: cross-examination p90.

<sup>117</sup> The prosecution quoting Myra: cross-examination p91.

<sup>118</sup> The prosecution quoting Myra: cross-examination p90.

<sup>119</sup> W O’Barr ‘*Linguistic Evidence: language, power and strategy in the courtroom*’ Academic Press: New York (1982) Ch 5.

<sup>120</sup> W O’Barr ‘*Linguistic Evidence: language, power and strategy in the courtroom*’ Academic Press: New York (1982) Ch 5.

<sup>121</sup> See Ch 5.



Myra: 'You can tell me what the statement says, yes.'<sup>123</sup>

Prosecution counsel: 'Are you saying to my Lord and the jury ...?'

Myra: 'I am saying to my Lord and the jury ...'<sup>124</sup>

Thus, although Myra was not aggressive in her responses she did not appear passive but as capable of and willing to defend herself in the face of an aggressive attack, in an alien, threatening and male dominated, public environment.<sup>125</sup> This destabilised her defence of disempowerment.<sup>126</sup>

This trilogy of normality, maternity and passivity was combined by the defence in order to evoke generalisations that supported their narrative and rendered it palatable in the face of the evidence offered by the prosecution. By portraying Myra in this way Ian, defence counsel and Myra herself intended to present to the court the image of a woman incapable of wilfully committing the offences with which she was charged: premeditated serial murder. By redefining Myra as normal through this trilogy, the hope was that the portrayal of her as passively caught up in a robbery that went wrong would be accepted by the jury. These discourses cannot, however, be awarded the status of themes in the case, indeed it is not always evident that the use of gendered stereotypes was conscious. This may explain to some extent why the prosecution were ineffective in rebutting some aspects of Myra's construction as appropriately feminine until they found a clearly identifiable construct with which to oppose it. The construct they identified was sexuality.

### **The Construction of Myra by the Prosecution**

In addition to the attack waged on the defence's portrayal of Myra, the prosecution submitted their own counter construction of her, present predominantly through their

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<sup>122</sup> p85

<sup>123</sup> p91

<sup>124</sup> p95

<sup>125</sup> See Ch 3.

<sup>126</sup> The incongruity of her reported and claimed passivity and actual appearance is made more powerful by David and Maureen's contrasting submission to and respect for the authority of the court. For example throughout his testimony David addresses counsel as 'sir'.



cross-examination. The purpose of this section is to explore how, through their cross-examination and with reference to gendered stereotypes, the prosecution reconstructed characters and events. The focus is not, however, on the reconstruction of events as such but on the generalisations they employ to support their version.

The generalisations adopted supported the prosecution's own version of events, which was founded on the belief that Myra, even as a woman, was guilty of the murders. The constructions of character they evoked to support this account were based on gendered assumptions about women. This prosecution attack was conducted through two gendered discourses: sexuality and women as liars.

### **Sexuality**

The most powerful response to the defence's attempts to present Myra as normal and maternal was provided by the theme of sexuality which was identified and utilised by the prosecution in their cross-examination of Myra. Through 'sexuality' and 'deviousness' stereotypical notions of bad femininity were applied to Myra. The purposeful construction of her deviant/unconventional sexuality in their cross-examination meant that this construction of femininity may have been the only one that was clearly identified and selected for use in the trial. This identification of sexuality may have been because of its deep-rooted and long history and its pervasiveness and strength.

Aggressive sexuality was evidenced most strongly in relation to Ian, for example, through his liking for pornographic literature and pornographic photography. In contrast, similar evidence was not available in relation to Myra.<sup>127</sup> In spite of this, her sexuality, including her supposed sexual aggression, became a major discourse in her cross-examination.

From the outset the appropriateness of Myra's sexuality was in question. She was an unmarried woman living and having sexual relations with a man at a time when moral and political values determined that marriage was the only appropriate place for these

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<sup>127</sup> As Ian claims all such material as his own and unrelated to Myra.



relations.<sup>128</sup> The theme of her inappropriate sexuality was, however, developed beyond this. Sexuality was introduced through Myra's relationships with Lesley Ann and Pat and, to some extent, her relationship with Ian. This directly countered the defence's use of these two young girls in the feminisation of Myra through maternity. The examination of Ian's sexuality in his cross-examination was limited to his 'relationship' with Edward. The construction of Myra's sexuality in terms of the two young girls contrasted with the unspoken standard of heterosexual penetrative sex, this rendered Myra deviant.<sup>129</sup> Similarly, Ian's construction as homosexual rendered him deviantly masculine (below). Myra's sexual deviance however was not only constructed through her supposed lesbianism as she was concurrently 'heterosexual' in terms of her (inappropriately sexual) relationship with Ian. Thus, through the prosecution's construction she was rendered bisexual. Their attack on her sexuality was all embracing and more aggressive than that waged on Ian, which addressed only one element of his sexuality and was less intense.

It is the heterosexual sexualisation of Myra which formed the first stage in the prosecution's demonisation of her. This was established through an examination of her relationship with Ian and the association of her with his pornography at the beginning of her cross-examination. Her sexual relationship with him formed the basis for the construction of Myra as sexually aggressive, and thus deviantly feminine. Consequently, there was a greater focus on sexuality in her evidence than his. Initially, the relationship was identified as inappropriately sexual<sup>130</sup> as the prosecution identified Myra as Ian's 'mistress'<sup>131</sup> and noted that they shared a bed. Myra resisted this construction describing Ian as her 'husband'. However, this attempted resistance by Myra was futile as throughout the cross-examination the prosecution intertwined allusions to their relationship with references to pornography, making it appear 'dirty' and implying that Myra's sexuality was tainted:

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<sup>128</sup> E Wilson *'Only Halfway to Paradise: Women in post-war Britain 1945-1968'* London, Tavistock (1980).

<sup>129</sup> See C Smart 'Law's Power the Sexed Body and Feminist Discourse' (1994) 17. *Journal of Law and Society*, 194

<sup>130</sup> The inappropriateness is particularly acute given the period of the trial during which the restriction of sexual activity to marriage was the moral norm.

<sup>131</sup> Kennedy notes the tendency for counsel acting for women to avoid the use of the word 'mistress' due to the negative connotations with which it is associated and instead to adopt the appellation 'common-law wife': H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p68.



‘You of course had the same ideas as Brady had on practically everything ... On sex? ... The same enjoyment of pornographic literature?’<sup>132</sup>

‘Did you enjoy living with a man who did (like pornography)?’<sup>133</sup>

‘Have you had them (pornographic books) in the bedroom?’<sup>134</sup>

The prosecution wove the discourse of their sexual relationship throughout the testimony and so this sexualisation of Myra also formed the background to questioning about Lesley Ann and Pat, questioning which constructed Myra’s lesbianism. This construction of Myra inverted her femininity and her sexuality. By portraying her as a lesbian she also accrued some characteristics of male sexuality, for example, sexual aggression.<sup>135</sup> The prosecution’s reconstruction of Myra began with an attack on the defensive construction of her maternity. This involved an attack on the assumption that, as the defence suggested, Myra was present during the photographing of Lesley Ann to render the situation ‘safe’. The prosecution demolished Myra’s alleged feminine role as placator and directly countered it with suggestion of her sexual aggression:

‘Did you indulge in any pleasures while these things were happening to the child?’<sup>136</sup>

The sexualisation of Myra through the cross-examination of her in relation to Lesley Ann was further facilitated by interwoven references to Pat, who was likewise sexualised. Pat appeared in order to counter the defence’s use of her as a symbol of Myra’s ‘safety’ and in support of the prosecution’s claim that Myra’s relationships were abnormal and sexual. In this way Myra was characterised in terms of dangerousness rather than safety.

The sexualisation of both relationships was facilitated through the adoption of semi-sexual and graphic language. The construction of Myra as sexual in relation to Pat was

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<sup>132</sup> Prosecution’s cross-examination of Myra p85.

<sup>133</sup> p85

<sup>134</sup> p85

<sup>135</sup> see A Ballinger *‘Dead Woman Walking: executed women in England and Wales 1900-1955’* Ashgate, Aldershot (2000), p153



achieved through the prosecution's suggestion that she had a hidden agenda: the friendship gave her 'particular pleasure', a 'certain enjoyment', 'morbid satisfaction', a 'kick'.<sup>137</sup> The effect was that Myra's relationship with Pat became sexualised. A similar approach was adopted in relation to Lesley Ann. By frequently referring to her as 'the naked child' she was identified through the sexual role she played in her interaction with Myra.

The passages of the cross-examination contain full and repeated quotations from the tape-recording of Myra's conversation with Pat about the disappearance of Lesley Ann.<sup>138</sup> This ensured the close association of Myra with her young friend and the sexualisation of their friendship, and emphasised the supposedly sexual nature of her association with Lesley Ann. The full intensity of Myra's sexuality was conveyed through her conversations with Pat. Her sexual pleasure was noted to stretch beyond the physical attack on Lesley Ann: Myra was accused of reading the newspaper coverage of the disappearance of Lesley Ann to Pat with 'relish' and 'intrigue'.<sup>139</sup>

This construction of Myra's 'relationships' contrasts with Ian's testimony during which references to the girls were less frequent and lacked the depth of detail, emotion, sexual language and extensive quoting. The culmination of the constitution of this construction was a portrayal of Myra's sexuality as not only active but as bisexual. Both of these combined to form the image of the 'She Devil':

'This Medusa draws together the many forms of female perversion: a woman whose sexuality is debauched and foul, pornographic and bisexual ...'<sup>140</sup>

The theme of sexuality was not entirely unique to Myra. The prosecution also sexualised Ian. However, unlike Myra, Ian's sexuality was problematic only in so far as it was depicted as being homosexual, aggressive sexuality being acceptable for men. His

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<sup>136</sup> p114

<sup>137</sup> p101

<sup>138</sup> In the aftermath of the disappearance of Lesley Ann Downey, Ian and Myra recorded Pat Hodges reading out newspaper articles about the disappearance and discussing it with Myra. This was found in the hidden suitcase.

<sup>139</sup> p100

<sup>140</sup> H Kennedy *'Eve Was Framed: women and British justice'* London, Vintage (1993) p240.



concurrent sexual relationship with Myra received little attention during his cross-examination and was not rendered problematic. Consequently he was not constructed in terms of (deviant) bisexuality, only in terms of (deviant) homosexuality. Just as a great deal of time was devoted to questioning Myra about Lesley Ann, a great deal of time was also spent questioning Ian about Edward. Once again there was a sexualisation of that encounter and through that sexualisation of his relationship with David.<sup>141</sup> These issues are explored more fully below.

As a consequence, Myra and Ian, and thus their relationship, were portrayed as ‘sexually deviant’ rather than as a healthy, normal and heterosexual. This was an important construction for the prosecution as it was their relationship and the passive femininity that it portrayed which was exploited by Myra’s defence. The prosecution’s alternative construction portrayed both a deviant relationship and deviant sexuality and thus deviant femininity. It was this alternative construction of deviant femininity that characterised the prosecution’s approach to Myra Hindley.

### **Lies, Lying and Wicked Women**

In addition to aggressive sexuality, one of the building blocks employed by the prosecution in the image of bad or devious femininity was ‘deviousness’ and ‘deceit’. Perhaps the strongest example of this construction is in the work of Pollack who argued that women’s greater powers of concealment made them frequently deceitful.<sup>142</sup> Indeed this presumption is reflected in advocacy manuals, which explain that women are perceived by jurors to be, for example, prone to exaggeration.<sup>143</sup> Naturally this is an image which has recently been challenged by feminists<sup>144</sup> but one which unfortunately persists in the criminal process<sup>145</sup> and was played out in Ian and Myra’s trial.

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<sup>141</sup> Who may be regarded in similar terms as Pat Hodges.

<sup>142</sup> O Pollack *The Criminality of Women* A. S. Barnes, New York (1961).

<sup>143</sup> W O’Barr *Linguistic Evidence: language, power and strategy in the courtroom* Academic Press, New York (1982) p61.

<sup>144</sup> See F Adler and J Simon *The Criminology of Deviant Women* Boston, London; Houghton Mifflin (1979), Ch 5 and F Heidensohn *Women and Crime* Basingstoke, MacMillan (1996) Ch 5.

<sup>145</sup> For example Kennedy cites the example of Judges warning juries of the ‘dangers’ believing rape victim’s uncorroborated evidence : H Kennedy *‘Eve Was Framed: women and British justice’* London, Vintage (1993) Ch 5.



Naturally, being a contested trial, throughout the hearing there was a large amount of conflicting evidence which lead counsel to challenge the validity of testimony given by the various parties. These inconsistencies were common and were brought to the fore during cross-examinations as a means of shedding doubt on the veracity of testimony submitted by the opposition's witnesses.<sup>146</sup> However, for the purposes of this study it is the way in which challenges were made and how they varied between witnesses that is of interest. The nature of challenges to evidence reveals yet another example of the intrusion of gendered stereotyping into the trial process. The presumption of female dishonesty means that women's accuracy and honesty were more frequently and strongly questioned than that of the men.

Challenges to the accuracy of evidence given by David and Ian were done gently and without strong disapproval through the use of neutral phrases common to the courtroom such as 'I suggest' or 'I put it to you'.<sup>147</sup> At their strongest, accusations of lying in Ian's testimony took the form of claims that something is 'false'. An equally gentle technique employed by the prosecution to indirectly challenge Ian's evidence was to undermine him by emphasising the number of people he claimed had lied, thus throwing disbelief on his own evidence:

'Mr Benfield (police officer) is lying again is he?'<sup>148</sup>

Again, this technique of highlighting external inconsistencies in testimony is a common cross-examination technique.<sup>149</sup> It is particularly effective when the witness delivering the opposing testimony has no motive for lying and is credible, as (apparently) are police officers.<sup>150</sup> Thus, challenges to validity or truth in Ian's cross-examination were either indirect, or accusations framed in weak terms. The significance of this in a study of the use of gender in the courtroom becomes clear only when contrasted with the questioning of the validity of the Myra's evidence. Through this questioning Myra was portrayed as a 'wicked woman'.

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<sup>146</sup> R DuCann *'The Art of the Advocate'* Harmondsworth, Penguin (1964), Chs 6,7 & 8 and M Stone *'Proof of Fact in Criminal Trials'* W Green and Son Ltd: Edinburgh (1984) Ch 6, p99.

<sup>147</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press. Oxford (1993), Ch 2 and R Du Cann *'The Art of the Advocate'* Penguin (1993) Ch 6.

<sup>148</sup> p52

<sup>149</sup> This is a technique known as paraphrase reformulation, see P Goodrich *'Languages of Law: from logics of memory to nomadic masks'* Weinfield and Nicolson: London (1990) p197.



Although challenges to Myra's honesty during her cross-examination were not as frequent as to that of Maureen<sup>151</sup> they were more frequent than to that of Ian and David. The most remarkable feature of accusations of dishonesty during her testimony, however, was the strength of accusation. The prosecution commenced with claims of 'falsity' (the most severe accusation made of Ian's evidence) and progressed to stronger allegations which challenged the truth of Myra's claims in personally abusive ways. For example, she was accused of 'wicked lie(s)'<sup>152</sup> and 'wicked invention(s)'.<sup>153</sup> Furthermore, the implication was made that she was not merely lying, but calculating.<sup>154</sup> Thus, accusations of lying drew upon stereotypes of female deviousness.

This attack on Myra forms the second of a two pronged attack by the prosecution derived from gendered stereotypes, the first being the construction of her deviant sexuality.

### **The Victims: An Instrument of the Prosecution**

The final, and one of the most effective attacks on Myra's defence was through the victims. Once again it was Lesley Ann who featured most strongly, as the evidence relating to her illustrated the extent to which Myra was involved in the murders and was arguably the most emotionally disturbing evidence in the trial. This final discourse, however, did not apply a pre-constructed 'model' of bad femininity<sup>155</sup> to Myra, but drew on stereotypes or assumptions about women in the form of generalisations that

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<sup>150</sup> M Stone *'Proof of Fact in Criminal Trials'* W Green and Son Ltd: Edinburgh (1984) Ch 8

<sup>151</sup> Maureen as a woman is also subject to frequent accusations of lying. However, Maureen is subjected by the defence to only mild challenges which take the form of 'suggestions'. The difference between her and the men lies in the implication that she is 'a little confused' which, when coupled with patronising comments such as 'we are getting it (information) by easy stages', challenges not only Maureen's truthfulness but her very capacity to recall information. Furthermore, the frequency with which the suggestion of falsity is made against her is far greater than against the men. There is an implication of lying on almost every page of Maureen's cross-examination, sometimes several times per page, compared to an average of once every five pages in the testimony of Ian and David. This is more surprising when one considers that of all the witnesses Maureen has least need to lie.

<sup>152</sup> p115

<sup>153</sup> p112

<sup>154</sup> During the cross-examination by the prosecution she is accused of being 'ingenious but untruthful', p89.

<sup>155</sup> Preconstructed meaning a construction readily identifiable throughout the criminal justice system such as sexuality or deviousness.



implicitly undermined her femininity by constructing relationships with the victims. It drew upon generalisations relating to bad femininity to construct a deviant and sexual relationship between Myra and the victims. Again, however, this was not a theme in its own right. This was an emotive discourse and may, therefore, be said to be a *thelma* rather than a theme.

It was the medium of the victims that perhaps provided the strongest attack on Myra's femininity. This *thelma* brought together all the previously identified feminine discourses and used them in the portrayal of a deviant cruel and twisted femininity. The characteristics of femininity evident in the defence case (emotions, relationships and maternity) were contorted and combined with the prosecution's themes of sexuality and deviousness to produce the image of warped femininity.

Victims are a powerful presence in any trial, whether they are physically present or not, as they embody the harm caused by the crime. Their presence in the courtroom can be compelling and their testimony emotive. As a consequence of the power of the status of victimhood, the defence frequently attacks that status.<sup>156</sup>

'Defence lawyers would routinely try to turn matters on their head, transforming victims ... into villains and fools.'<sup>157</sup>

This process is particularly prominent in rape trials, whereby the defence claims that victims of rape are not victims at all, but temptresses.<sup>158</sup> This approach to victims is known as 'victim-blaming'. This process is compounded by the very nature of the adversarial trial, which challenges the truth of victims' evidence and forces them to defend their version of events, thus compounding their victimisation.<sup>159</sup> The defence, however, must tread a careful line. Advocacy manuals note that witnesses, particularly victims, should be treated carefully during cross-examination, or the process will cause

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<sup>156</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) p69.

<sup>157</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, Oxford (1993) p72.

<sup>158</sup> J Tempkin 'Prosecuting and Defending Rape: perspectives from the bar' *Journal of Law and Society*, Vol 27, No2, June (2000), 219, J Temkin 'Sexual History Evidence - The Ravishment of section 2' (1993) *Crim LR*, 3.

<sup>159</sup> See D McBarnet 'Victim in the Witness Box: confronting victimology's stereotype' *Contemporary Crises*, 7 (1983) 293-303.



the jury to resent defence counsel and elicit sympathy for the victim/prosecution.<sup>160</sup> It is also noted in these manuals, however, that children make excellent witnesses.<sup>161</sup> This is perhaps because of their assumed innocence,<sup>162</sup> which has been violated by the crime committed against them. Thus, child victims are perhaps the most effective prosecution witnesses. However, ironically, it has also been noted that victims can make difficult and potentially disastrous witnesses who may become too emotional and be perceived as unreliable.<sup>163</sup>

In the instant case, however, the victims were absent. The prosecution, therefore, had the advantage of the associations of childhood innocence, which prohibited victim-blaming to any degree, but none of the 'dangers' associated with child testimonies. In spite of their absence their presence in the courtroom was simulated through their reification,<sup>164</sup> which was intended to renew disgust at the murders committed by the accused. This may have actually benefited the prosecution who did not have to deal with the difficulties of victim evidence, but whose victims were innately blameless, being children. This was particularly effective in relation to Myra, as the victims provided a tool for the construction of her as responsible as an adult and as shunning her maternity and devoid of normal emotion. Again, whilst the use of the victims to elicit hatred of the accused was clearly intended by the prosecution, the role gender plays in this process was perhaps a reflection of societal norms rather than a purposeful act. In response, the defence sought to minimise the role of the victims in Ian and Myra's testimonies as part of their attempt to present events as 'normal'. This section examines how this is achieved.

### **Treatment of the Victims by the Defence**

One striking pattern in the different approaches of the defence and prosecution to the victims was the way in which the victims and the other players were named by counsel during the relevant testimonies. Nomenclature studies have revealed that naming

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<sup>160</sup> R Du Cann *'The Art of the Advocate'* Penguin (1993) p129.

<sup>161</sup> R Du Cann *'The Art of the Advocate'* Penguin (1993) p108.

<sup>162</sup> See P Thane *'Childhood in History'* in M King (Ed) *'Childhood, Welfare and Justice'* London, Batsford Academic and Educational Press (1981)

<sup>163</sup> See D McBarnet 'Victim in the Witness Box: confronting victimology's stereotype' *Contemporary Crises*, 7 (1983) 299.

<sup>164</sup> The victims are 'made real' through the testimonies. They are metaphorically raised from the dead and



phrases 'are almost never neutral, they express attitude ... status, intimacy or role relationship.'<sup>165</sup> In the courtroom naming is an important mode for the communication of various ideas or symbols.<sup>166</sup> In Myra and Ian's trial its use served two important functions in the portrayal of the victims. It was used first, in the construction of a hierarchy of credibility which distances or associates the witnesses and the victims. Credibility and proximity or distance are constructed through the formality of appellations. The most formal and distant address, indicating the highest degree of credibility, is Mr/Mrs/Miss, followed by first name and surname, followed by surname alone, and finally the most intimate and proximate use of the first name alone or familiar names.<sup>167</sup> Secondly, the naming was used as a mode of describing the victims in emotionally provocative terms.<sup>168</sup>

The pattern of this construction of credibility and distance (or proximity) in relation to the naming of the victims, was evident, for example, in the defence's cross-examination of David. Myra's defence counsel sought to establish David's active role in Edward's murder. During David's cross-examination, Edward was reified through the use of descriptive naming; he was referred to as 'lad', 'youth' or 'boy'. The effect of this use of naming was to describe Edward through the naming, different connotations were conveyed by this different type of naming or labelling, as opposed to the dehumanising appellation 'Evans'.<sup>169</sup> This particular appellation identified and stressed his young age and thus emphasised his innocence in the chain of events leading to his death. In contrast, throughout his cross-examination of David, Myra's counsel named her as 'Myra Hindley', thus demonstrating respect for her and therefore promoting her credibility.

This construction of credibility and distance (or proximity) in relation to the naming of the victims, was also evident in Ian and Myra's testimonies. The credibility of the defendants was supported through the use of formal naming by counsel, for example,

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become real people, characters in the trial.

<sup>165</sup> A Zwickey 'Hey, what's your name!' 10 Chicago Linguistics Soc (1974), 287-301 at 296

<sup>166</sup> Paul Robertshaw 'Summary Justice: judges address juries' Cassel, London Washington (1998), Ch 3.

<sup>167</sup> P Brown and S Levinson 'Politeness: Some universals in language usage' *Studies in Interactional Linguistics* 4. Cambridge, Cambridge University Press (1987)

<sup>168</sup> This tactic is employed predominantly in Myra's cross-examination. It will be explored fully below.

<sup>169</sup> For example, the different descriptive labels 'baby' and 'foetus' will have different effects on the jury. B Danet 'Baby or Foetus: language and the construction of reality in a manslaughter trial' *Semiotica* (1980) 32, 187



‘Mr Brady’, whereas the victims were named in an androgynous, impersonal fashion, for example, ‘Evans’ or ‘the child’. Through this use of naming, the victims remained abstract, anonymous, disembodied characters distant from the witnesses.<sup>170</sup>

Despite there being, during examinations in chief of both Myra and Ian, a common distancing of the accused from the victims, the distancing was achieved through different means in each testimony. Distancing in Myra’s case was achieved by minimising the extent to which the victims were discussed, thus shifting the focus of Myra’s defensive testimony. When the victims were discussed Myra was ‘removed’ from direct interaction with them and Ian was inserted as intermediary.

Such an approach was not possible in Ian’s case due to the primary role he assumed in order to protect Myra, and so distancing was less easily achieved. Ian did however, on several occasions, explicitly attempt to distance himself from his victims:

‘Evans was talking mostly about clothes – I wasn’t taking an interest: I wasn’t really listening’<sup>171</sup>

‘I have read something about him in the papers. I have no specific recollection.’<sup>172</sup>

This distancing was complemented by the selective exclusion by the defence of some of the evidence which implied proximity, for example, the discussion which took place in the police station about the tapes and photographs of Lesley Ann.<sup>173</sup> Because of the limitations of distancing in Ian’s case an alternative defensive tactic was assumed.<sup>174</sup> In order to mitigate his actions, Ian attributed the victims with agency, thus minimising his role in their victimisation, whilst engaging in victim blaming. Agency in relation to Edward took the form of provocation. His protests, which according to Ian took the form of kicking, screaming, and swearing, triggered a defensive reaction in Ian and so Edward was rendered partially responsible for his own death. Likewise, Lesley Ann

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<sup>170</sup> This pattern also applies to David Smith who as a witness for the prosecution must be disassociated from the murder of Edward.

<sup>171</sup> Examination in chief of Ian p5.

<sup>172</sup> Examination in chief of Ian p24, also see p25.

<sup>173</sup> This is brushed over by Ian’s defence p22.

<sup>174</sup> One which is primarily used in direct response to the attack of the cross-examinations of Ian, and to a lesser extent, Myra.



was awarded agency in Ian's testimony. Initially, it was contended that she consented to pose for the pornographic photographs in return for payment and, according to Ian, that she undressed and dressed herself. Only when she began to protest and scream did Ian become aggressive. She too was therefore active in her own victimisation. This formulation of events in both instances also constructed Ian's actions in terms of a legitimate male response to provocation.

### **Treatment of the Victims by the Prosecution**

The discussion of the victims during the cross-examinations of Myra and Ian constitutes a *thelma* in the prosecution narrative. They provided an emotive discourse which ran through the cross-examinations. Further, as they were reified through the testimony their proximity, both to the accused and in the courtroom was established. However, the prosecution's reification of the victims in each testimony was different. In Ian's cross-examination it can be described as broadly illustrative, whilst in Myra's it was more individualised.

The illustrative approach evident in Ian's cross-examination was played out through the use of vivid imagery in relation to both the victims and their graves. This imagery drew on evidence, such as photographs of the grave-sites, however, it was embellished through the use of rhetoric.<sup>175</sup> The use of emotive language in reaction to the victims by the prosecution drew on embedded notions of right and wrong to drive home the horrific nature of the crimes that were committed against the children, and the nature of the acts that were performed in the commission of the crimes.

As is noted above, the particular focus of Ian's testimony was Edward and so this is where the use of imagery is most prominent. Initially, the full horror of what happened to him was communicated to the courtroom by the prosecution through the photographs of his body and injuries. Whilst examining the photos, prosecution counsel illustrated Ian's crime graphically by taking the hatchet in his hand and noting that the dreadful

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<sup>175</sup> See Ch 3.



injuries were ‘caused by you wielding *this* axe.’<sup>176</sup> Throughout the testimony the prosecution expounded the horror of Edward’s death through the use of rhetoric:

‘Some of the lad’s brains were on the floor ... bits of the boys brains were spattered on the floor.’<sup>177</sup>

‘With his blood and brains spattered all over the room?’<sup>178</sup>

‘Standing up with the blows of this axe raining into his head?’<sup>179</sup>

This pattern was also evident during the questioning of Ian regarding Lesley Ann. As in the case of Edward, photographs provided evidence of the horror of the crimes whilst counsel’s commentary emphasised her suffering:

‘Would you like to look at the photograph of the girl on the bed in an attitude of terror?’<sup>180</sup>

The impact of this was maximised through the tape recording:

‘The poor child is having this forced down her throat and makes retching noises.’<sup>181</sup>

The evidence in relation to Lesley Ann, like that relating to Edward, was supplemented by the effective use of illustrative language by the prosecution to generate vivid images of the treatment to which she was subjected:

‘... stripping of the child naked; the forcing of a gag into her mouth; tying of a scarf around her neck, and then compelling her to take pornographic postures.’<sup>182</sup>

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<sup>176</sup> p5

<sup>177</sup> p6

<sup>178</sup> p7

<sup>179</sup> p7

<sup>180</sup> p42

<sup>181</sup> p43

<sup>182</sup> p39



However, the prosecution's approach in their cross-examination of Myra was different. Key to their approach was the creation of proximity between her and the victims. In doing so the prosecution reflected the association of women and relationships in their method. Through her testimony, the prosecution constructed a quasi-relationship between Myra and the victims. This relationship undermined the construction of Myra's maternity which was offered by the defence. Initially, this pattern is evident in the use of proximate and emotive naming in the cross-examination and as will become clear, once again naming is indicative of trends evident in the full text of the transcript.

Even when examining patterns in the transcript on the most basic of levels, in other words by literally counting the number of times particular names were used, several patterns emerge in Myra's cross-examination which can be generalised as a trend toward the plethoric use of emotive naming in relation to the victims and Pat Hodges.<sup>183</sup> This use of emotive and descriptive naming made the victims 'real' in her testimony, it brought them to the forefront of the described scene and located them in proximity to Myra. Thus, as in their cross-examination of Ian, the prosecution employed rhetorical discourse in the construction of a thelma.

Whilst emotive naming featured in the cross-examinations of both Myra and Ian, it had a stronger presence in Myra's testimony; there were fifty-five as compared to thirty eight instances.<sup>184</sup> This works out at one use of emotive naming every two pages in Ian's cross-examination, compared to three every two pages in Myra's. More generally, there was more naming of the victims by the prosecution in Myra's testimony when calculated on a 'per page' basis, three names per page as compared to twice per page. Thus, the victims were evidently the subjects of greater focus in her evidence, again affirming their importance in the prosecution's greater need to construct her responsibility.

The trend toward the greater association of Myra with Lesley Ann than with Edward is evidenced in the more frequent and descriptive use of emotive naming in the discussions

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<sup>183</sup> Who takes on the status of quasi victim.

<sup>184</sup> It should be also remembered that the cross-examination of Ian is 62 pages compared to that of Myra which is 38 pages.



of the events surrounding the her death. Descriptive names adopted by the prosecution include, for example, 'naked child', 'poor child' and 'gagged child',<sup>185</sup> whereas descriptive naming in relation to Edward related only to his age, for example, 'boy' or 'youth' and was used less frequently. This may be for two reasons. First, Edward was older than the other children and so particular appellations were used to emphasise his youth. Secondly, Edward may have demanded less sympathy from the jury both because he was older and because of the implication that he was gay, and so he did not hold the same emotive power as Lesley Ann.

The naming of Lesley Ann in descriptive, emotive terms had the effect of stressing both her age and suffering. Furthermore, the coupling of emotive naming and a description of her sex, for example, 'naked' or 'gagged' girl, meant that not only was Lesley Ann's age and suffering used in her reification but so too was her sex, something which was exploited throughout the transcript to increase her proximity to Myra and to support the implication of deviant sexuality. There were twenty such references in Myra's testimony compared to only twelve in Ian's. When coupled with the references to Lesley Ann as a 'child' or, for example, a 'little child' or a 'naked child',<sup>186</sup> the extent to which she was reified by the prosecution in Myra's cross-examination through the use of her name, description, the tape recording and the photographs,<sup>187</sup> is clear.

Although Edward did not receive the same attention as Lesley Ann in Myra's testimony the use of descriptive naming by the prosecution once again exceeded that in Ian's testimony. He was referred to as 'boy' or 'youth' or 'lad' approximately once in every two pages in her testimony compared to only once in every three pages in Ian's. This again illustrates the crucial role played by the victims in Myra's cross-examination. Further, portraying Edward as a child undermined the defence's portrayal of Myra as maternal.

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<sup>185</sup> Descriptive names are used thirty four times by the prosecution in the cross-examination of Myra compared to only eighteen in his cross-examination of Ian.

<sup>186</sup> There are fourteen such references in Myra's testimony compared with only six in Ian's.

<sup>187</sup> These terms are 'complemented' by the prosecution frequently referring to Myra as 'the accused Hindley' in the testimony of Ian, thus emphasising her role in the killing of the 'little, gagged, naked girl.'



Emotive and descriptive naming was also employed in relation to Pat.<sup>188</sup> The appellations used by the prosecution mirror those used in relation to Lesley Ann. The majority of the references were sex specific naming her as, for example, ‘the girl’, and twenty references name her as a ‘little girl’.<sup>189</sup> Furthermore, references to Pat feature in proximity to Lesley Ann in the transcript, and the parallels were therefore further exemplified. Thus, Pat became a ‘quasi victim’ through both naming and her location in the evidence. This construction of her facilitated the prosecution’s attack on her as a symbol of Myra’s maternal safety, whilst the strong focus on the victims in her cross-examination constantly reaffirmed the perverse threat she posed.

The strong association of Myra and the victims evidenced in an analysis of nomenclature is indicative of a wider trend in her cross-examination. The proximity of Myra to the victims, particularly to Lesley Ann, played a crucial role in the prosecution’s construction of her active role in the murders, in the formulation of her deviant sexuality and in undermining the construction of her as appropriately maternal. Rather than reconstructing in peoples’ minds a picture of the victims through the use of imagery, Myra’s cruelty was played out predominantly through the transcribed tape of Lesley Ann, which was played by the prosecution earlier in the trial.

Later, during her cross-examination, Myra was required to read a section of the tape transcript. This caused the scene and her role to be recreated in the courtroom. Ultimately, by recreating the interaction between Myra and Lesley Ann, a quasi-relationship was constructed between them. The creation of this relationship was facilitated by Lesley herself when, on the tape, she calls Myra ‘mum’, a role which Myra seemed to both accept and reject: she accepts the role by using soothing words: ‘hush, hush’<sup>190</sup> and rejects it through her cruelty: ‘shut up or I’ll forget myself and hit you one.’<sup>191</sup> The effect of this approach by the prosecution was that the events became personalised. The recreation of the scene in Ian’s testimony was external; he described it from a detached ‘fly-on-the-wall’ perspective. In Myra’s testimony the dialogue located

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<sup>188</sup> An examination of the naming of the naming of Pat Hodges further supports the assertion that the female characters are the subject of greater attention in the testimony of Myra. Pat Hodges is named twenty nine times, compared to just eighteen times in Ian’s cross-examination. That is less than once every three pages in Ian’s cross-examination and more than twice in every three pages in Myra’s.

<sup>189</sup> Compared to eight ‘girl’ references in Ian’s testimony.

<sup>190</sup> The prosecution quoting Myra’s voice on the tape recording p108.

<sup>191</sup> p43



her at the scene, brought the courtroom closer to the action and proved crucial in the construction of her agency. Further, as a consequence of the construction of Myra's relationship with Lesley Ann and the cruelty Myra displayed in spite of it, her already appalling acts, acts committed by a woman against a child, became more abhorrent and the defence's portrayals of her as maternal were rendered futile.

Myra's cruelty toward Lesley Ann became an explicit theme in the prosecution's examination of the dialogue as she refused to respond to Lesley Ann's pleas: 'Please God help me'.<sup>192</sup> The prosecution, in their cross-examination of Myra, went on to compound her perceived cruelty by coupling it with her lack of compassion for the victims and their families:

'The death of the boy meant absolutely nothing to you?'<sup>193</sup>

'Do you not think that what the least decent human being would have done would be to inform the police ... Or even the parents of the child?'<sup>194</sup>

And by contrasting it with the concern of others for them:

'Were you aware when that little girl disappeared of the hue and cry that was raised to try and find her ... The television broadcasts, the posters, the newspapers, the appeals, the searches by the hundreds of conscientious policemen and ordinary members of the public?'<sup>195</sup>

Unlike this explicit construction of Myra's cruelty, Ian's cruelty was only implicitly evident through his examination and the evidence. For example, the contrasts between his own barbarity and the compassion of others were less frequent. Myra's cruelty however, was reiterated and emphasised throughout her cross-examination through the focus on and reification of the victims. Consequently the defence's construction of her maternity was undermined.

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<sup>192</sup> p182

<sup>193</sup> p86, also see p87

<sup>194</sup> p103



## The Graves: Continuing Constructions by the Prosecution

The different patterns evident in Myra and Ian's cross-examinations are also evident in the way in which the victims' graves were discussed in the testimonies. The graves featured less frequently in Myra's testimony, as the focus was on action and people rather than images, as in Ian's cross-examination. The few times the graves were discussed, the individualisation of the evidence continued as the major discussion revolved around the photographs of Myra sitting or standing on them. This approach had the additional effect of associating her closely with the murders and constructing her in potentially a more active role.

In Ian's cross-examination, the use of imagery and the creation of pictures through rhetorical language continued. The graves were the subject of artistic imagery, which rendered them almost pleasant sites of rest and, most noticeably, there was an absence of both him and Myra:

... on this side of the valley and the hill ... that is the little stream where Pat took a drink of water, is it not? ... The stream practically ran into John Kilbride's grave...<sup>196</sup>

'The kindly earth has not settled yet.'<sup>197</sup>

'The process of nature having provided a decent covering.'<sup>198</sup>

This sharply contrasted with the images used in Myra's cross-examination:

'A soil heap. The grave of John Kilbride.'<sup>199</sup>

'His body ended up in that lonely grave on the moors.'<sup>200</sup>

And Myra was associated directly with the graves:

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<sup>195</sup> p99

<sup>196</sup> p54

<sup>197</sup> p3

<sup>198</sup> p49

<sup>199</sup> p116



‘The toe of you left high boot is within a few inches of the dead boys head.’<sup>201</sup>

This again illustrates the proximate location of Myra with the victims. The effect of the use of this style in relation to Myra may have been to provoke anger in response to her; she had subverted her feminine role and victimised children with whom she was in a ‘proxy’ relationship by virtue of her femaleness.

Conversely, although the graves themselves featured more heavily in Ian’s testimony, they were integrated into the process of the murders, thus for Ian, the crime itself appeared to be a process from the planning, through the abduction, to the burial:

‘... who was to be the grave finder ... you were to be the selector of the grave?’<sup>202</sup>

Consequently, the nature of the crime appeared to be different: Ian is a serial killer, a ‘collector’: he creates ‘this cemetery of (his) own making’.<sup>203</sup> Myra however, was located primarily in terms of the actual deaths, as seeking immediate pleasure in the torture of Lesley Ann and finally the deaths themselves, as illustrated by the photographs of her on the graves, again illustrating her cruelty and dearth of maternity.

### **Myra and Ian’s Defence to the Prosecution’s Construction of the Victims**

There was some effort by both Myra and Ian to counter the prosecution’s construction of their crimes through the victims. However, this was a more prominent theme in Ian’s evidence because for Myra to construct a defence based on her reaction and the victim’s provocation, would have meant she assumed an active role in their (her and Ian’s) activities. Therefore, references by Myra to Lesley Ann’s agency were limited to Lesley Ann’s consent to be photographed and her (Lesley Ann’s) undressing herself.

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<sup>200</sup> p120

<sup>201</sup> p118

<sup>202</sup> p26

<sup>203</sup> Prosecution’s cross-examination of Ian p4.



During Ian's cross-examination the prosecution continued to take the images of Ian's own construction, evident in his examination in chief, and to use them against him, transforming Edward's provocation into brave resistance:

'Although he obviously struggled for his life, he never got on his feet again.'<sup>204</sup>

Similarly in the case of Lesley Ann:

'She has put up quite a struggle against being gagged.'<sup>205</sup>

This reconstitution of events formed a thread in the construction of Ian's dangerous masculinity by the prosecution, below.

Similarly, the prosecution reconstituted Myra's defensive construction of the agency of the victims and used it in the construction of her as active and responsible. Just as Edward was transformed from Ian's negative image to a positive image, so Lesley Ann was also transformed from helpless victim to 'dangerous witness':

'Children of 10, 11, 12, though they may suffer at your hands they can tell, can they not?'<sup>206</sup>

Consequently, Myra's construction as passive was undermined and she was reconstructed in terms of active agency.

Thus, it is clear that the victims were a vital part of the prosecution's construction of Myra. They illustrated both her agency and her cruelty, and were a medium through which her sexuality was constructed. By using methods in her cross-examination which evoked emotional responses and which ensured her close association with both the victims and their murders, Myra's cruelty and want of maternal feeling were demonstrated.

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<sup>204</sup> p7

<sup>205</sup> p44



### Recurring Patterns of Gender Construction: Ian Brady

So far this chapter has examined the construction of Myra through the trial. However, just as femininity was constructed, so was masculinity. The construction of Ian's masculinity was important for the defence in its own right, shoring up the defence version of events with a vision of masculinity that rendered it credible. The construction of Ian's masculinity was, however, also important in the construction of Myra: the portrayal of Ian's 'normality' provided support for Myra's feminine construction. First, the masculine construction of Ian provided the norm or standard against which Myra's construction as the feminine other was contrasted. Secondly, the construction of masculinity in the trial and its non-application to Myra re-enforced her femininity. Finally, the construction of Ian's masculine superiority provided a basis for the construction of Myra's feminine subservience.

Just as the defence attempted to normalise and feminise Myra through her behaviour and the theme of maternity, they also used traditional constructions of masculinity in order to present Ian as normal. The similarity of these patterns in relation to both defendants is striking. Both modes of normalisation identified above, (the inclusion of description of normal, expected events and surroundings by both Myra and Ian, and the application of traditional discourses of gender) were evident in the defence's construction of Ian, just as they were in the construction of Myra. In the defence's construction of Ian, it was the breadwinner model that was employed.

As noted in chapter one, the breadwinner model is one of the legal standards against which men are compared. The subject was raised at the very beginning of Ian's examination in chief, establishing his consistent employment over the past seven years. However, one of the strongest modes of construction of Ian's masculinity was through the comparison of him with David. Just as Maureen was undermined and defeminised by Myra's counsel in order to present Myra in a more feminine light, so David was emasculated by Ian's counsel during his cross-examination via the breadwinner model. This provided a background for Ian's later examination in chief, during which his 'good' masculinity was confirmed.



‘During the whole time that you knew him, Brady was in regular employment, and the same employment? ...You, on the other hand, were most of the time unemployed and moving from one job to the other?’<sup>207</sup>

The breadwinner theme was raised eleven times in David’s cross-examination, often in the form of long passages, illustrating David’s dislike of work, his parasitic nature and his willingness to steal rather than work. The defence established that David had been unemployed throughout the majority of his marriage and had been supported primarily by his father. Furthermore, since the murder of Edward he had remained unemployed, living on money received from various newspapers, income which was identified as ‘money for nothing’.<sup>208</sup> Thus, Ian’s consistent and steady employment was emphasised.

Like defence counsel, Ian also adopted a comparative approach to the portrayal of his masculinity during his examination in chief. He portrayed the masculinity of the police following his arrest as inappropriate and his response to them in terms of appropriate masculinity. Throughout his examination in chief he described how the police were threatening and used tactics of intimidation but that he was steadfast, strong and unperturbed by them. For example, he suggested that they: deliberately killed his dog; refused him a solicitor; crowded him and bombarded him with shouted questions; and that they shut him in a room with a number of men who threatened him. In doing so he intended to undermine the veracity and reliability of police testimonies.<sup>209</sup> However, Ian also maintained that he remained steadfast and was not intimidated by them; in fact, he found their methods amusing. He ridiculed them with the intention of disempowering them whilst he maintaining the portrayal of his own masculine mettle:

‘... one on each side, shouting a foot from each side, with saliva spattering all over the place.’<sup>210</sup>

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<sup>207</sup> Cross-examination of David by Ian’s counsel p7.

<sup>208</sup> p24

<sup>209</sup> However, the police are assumed to be sound and reliable in trials (P Goodrich ‘*Languages of Law*’ Weidenfield and Nicholson: London 1990, p197). Further, their reliability and veracity is supported by the prosecution throughout the trial, see below, furthermore Ian undermines his own attempts to draw on ‘good masculinity’, below.

<sup>210</sup> p21



Ian apparently perceived this portrayal of his masculinity as appropriate masculinity. Indeed, its core elements (strength, power, bravery, and toughness) accord with what have been identified as characteristics associated with masculinity.<sup>211</sup>

However, in spite of this, the comparative approach adopted by Ian was a dangerous technique. By attacking the police, particularly in an emotive case like this, it is likely that Ian further alienated the judge and jury whose loyalties would have (inevitably) lain with the police.<sup>212</sup> Further, Ian ultimately damaged his counsel's constructions of appropriate masculinity by drawing on his own understanding of masculinity and thus, presenting an inappropriate construction of himself.

This construction revolved predominantly around his criminality. The defensive version of events included Ian's admission to planning to rob Edward Evans. Ian adopted an understanding of masculinity that linked it to both crime and violence. This is reflective of criminological theories that understand crime as an expression of masculinity.<sup>213</sup> Similarly, he regarded masculinity as linked to violence, violence being an expression of masculinity.<sup>214</sup>

Unlike Myra, who expressed shame in response to her crimes,<sup>215</sup> Ian was not ashamed of his criminality in relation to the robbery. This was evident through his apparent immodesty. He talked about it in a nonchalant, 'off-hand' fashion; when the robbery took place depended entirely on 'how I felt'.<sup>216</sup> He seemed comfortable with and even proud of the use of slang terminology in relation to the robbery:

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<sup>211</sup> S Box 'Power, Crime and Mystification' Tavistock, London (1983), p145, L Bibbings 'Boys Will Be Boys: masculinity and offences against the person' p234 in D Nicolson and L Bibbings 'Feminist Perspectives in Criminal Law', London, Cavendish (2000), R Collier 'Masculinities, Crime and Criminology' Sage, London (1998) p74, for general work on masculinity see RW Connell 'Masculinities' Cambridge, Polity Press (1995).

<sup>212</sup> The police are assumed to be sound and reliable in trials (P Goodrich 'Languages of Law' Weidenfield and Nicholson: London 1990, 197). For example, L Denning commented in McIlkenny v Chief Constable of West Midlands Police Force (1980) 2 All ER 227, that to find for the defendants would implicate the police in perjury, and this would be 'an appalling vista'.

<sup>213</sup> J Messerschmidt 'Masculinities and Crime: critique and reconceptualisation of theory' Lanham, MD : Rowman and Littlefield (1993).

<sup>214</sup> R Thurston and J Beynon 'Men's Own Stories, lives and violence: research as practise' In Dobash, Dobash and Noaks 'Gender and Crime' University of Wales Press (1995) p182.

<sup>215</sup> As crime by it's very nature challenges her femininity.

<sup>216</sup> p3



‘... was talking about screwing- that is housebreaking ...’<sup>217</sup>

His own construction of masculinity was further expressed in relation to the police, he insisted that he was not hiding from them and maintained that their questioning, which included alleged incidents of intimidation, failed to shake him, but was ‘like a farce’.<sup>218</sup>

This construction was attacked by the prosecution during Ian’s cross-examination, through a reconstruction of his masculinity as a dangerous masculinity. Unlike the characteristics of ‘appropriate masculinity’, above, dangerous masculinity is associated with disorderly masculinity, for example, masculine rage.<sup>219</sup> Thus the prosecution attacked the appropriateness of the application of traditional masculine discourses applied to him in order to counter his portrayal as normal and simultaneously sought to portray Ian in terms of dangerous masculinity. In portraying Ian’s dangerous masculinity, the prosecution drew on the discourse of deviant sexuality/masculinity.

Prosecution counsel used the evidence of homosexual interference with Edward and throughout the testimony implied that Ian had homosexual leanings.<sup>220</sup> This impugned and contradicted the heterosexual model of masculinity with which Ian had sought to ally himself. The homosexual model of masculinity is the ‘other’, and not perceived as masculine at all.<sup>221</sup> Furthermore, this allegation replaced Ian’s own (masculine) criminal categorisation (robbery) with deviant and emasculated criminality (homosexuality, which was at the time a criminal offence). This sexualisation was facilitated by evidence that Edward had, before his murder, removed his trousers and underpants. The prosecution brought up this evidence as frequently as possible. However, before homosexuality was used to slur Ian’s sexuality and thus masculinity, the prosecution first established that homosexuality is sordid by adopting colloquial, disparaging language:

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<sup>217</sup> p3

<sup>218</sup> p20

<sup>219</sup> See R Collier ‘*Masculinities, Crime and Criminology*’ Sage, London (1998), p82 and R Collier ‘Coming Together: Post heterosexuality, masculine crisis and the new men’s movement’ *FLS* Vol 4, No 1 (1996), 3.

<sup>220</sup> See ‘Sexuality’.

<sup>221</sup> L Bibbings ‘*Boys Will Be Boys: Masculinity and offences against the person*’ p234 in D Nicolson and L Bibbings ‘*Feminist Perspectives in Criminal Law*’, London, Cavendish (2000).



‘What were you doing in that hive of homosexuals?’<sup>222</sup>

And then went on to implicate Ian in an underhand manner:

Ian ‘... I have read about it.’

Counsel ‘I’m sure you have’<sup>223</sup>

Ian ‘I was thinking out the details.’

Counsel ‘I’m sure you were.’<sup>224</sup>

The prosecution’s distaste for Ian’s implied sexuality was covert rather than explicit:

‘What was the attraction you were holding out to lure- I had better use a neutral phrase- to get Edward Evans to come to Wardlebrook Avenue?’<sup>225</sup>

‘... What did you say to him to make him think his tastes would be satisfied?’<sup>226</sup>

Once this sordid tone was established and the jury were aware of Ian’s involvement with pornography, the prosecution implied that Ian and David’s friendship was also tainted:

‘You and Smith were very close friends ... What was the bond between you?’<sup>227</sup>

Just as Pat was used in the sexualisation of Myra, David was used by the prosecution to illustrate Ian’s inability to construct normal relationships.

Ian denied this implication and defended himself by referring to Edward in a derogatory manner, calling him a ‘queer’, and by distancing himself from homosexuals:

‘... and one of the other suggestions was that we should roll a queer.’<sup>228</sup>

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<sup>222</sup> p12

<sup>223</sup> p14

<sup>224</sup> p14

<sup>225</sup> p14

<sup>226</sup> p15

<sup>227</sup> p32

<sup>228</sup> Ian’s examination in chief p3.



‘I knew what he was ... I didn’t refer to them by their first names’<sup>229</sup>

The main thrust of the prosecution’s reconstruction of Ian was, however, the development of two alternative masculinities to counter the one of bravery, as portrayed by Ian. The first of these was the reconstruction of Ian as a coward. Like constructions of homosexuality, cowardice is the ‘other’ of masculinity.<sup>230</sup> The prosecution used the assault launched by Ian on Edward to expose him as cruel and cowardly. For example, he noted that Ian ‘struck a cowardly blow’,<sup>231</sup> that ‘this boy was a helpless target’,<sup>232</sup> that Edward was ‘a slender youth, hardly more than a boy...’<sup>233</sup> and he re-iterated several times that he attacked him from behind.<sup>234</sup> Thus the positive masculinity which Ian associated with crime through the robbery became dangerous, negative and cowardly.

However, the most effective attack on Ian’s masculinity was the reconstruction of his so-called bravery or normality as dangerous masculinity. In this reconstruction the prosecution sought to transform violence, which can be regarded as a legitimate masculine activity if, for example, conceived of as horse-play,<sup>235</sup> into dangerous masculinity. Ian’s violence was first established in the prosecution’s examination in chief of David. David’s violent attitudes were minimised whilst Ian’s were emphasised as the prosecution constructed a picture of a leader/follower relationship. Ian’s dominant role was made clear through David’s examination in chief. For example, it was he who suggested carrying guns,<sup>236</sup> using live ammunition<sup>237</sup> and it was him who suggested and supplied David with pornographic and violent books.<sup>238</sup> Ultimately, it was the claim of the prosecution that David was indoctrinated by Ian. In order to support this claim, it was necessary that the prosecution explained and excused David’s previous violent

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<sup>229</sup> Cross-examination by Myra’s counsel p30.

<sup>230</sup> RW Connell ‘*Masculinities*’ Cambridge, Polity Press (1995), Ch 1.

<sup>231</sup> Prosecution’s cross-examination of Ian p7.

<sup>232</sup> Prosecution’s cross-examination of Ian p6.

<sup>233</sup> Prosecution’s cross-examination of Myra p92.

<sup>234</sup> Prosecution’s cross-examination of Ian p7 and p6.

<sup>235</sup> Typically involving young men drinking and getting into trouble. See R Collier ‘*Masculinities, Crime and Criminology*’ Sage, London (1998), p73 and L Bibbings ‘*Boys Will Be Boys: Masculinity and offences against the person*’ p234 in D Nicolson and L Bibbings ‘*Feminist Perspectives in Criminal Law*’, London, Cavendish (2000).

<sup>236</sup> p5

<sup>237</sup> p4



offences.<sup>239</sup> The prosecution therefore allowed David to justify each of the offences through provocation,<sup>240</sup> thus implying that, unlike Ian, he was not wantonly violent and thus good and bad gendered stereotypes were again juxtaposed.

Ian readily admitted to enjoying violence during his examination in chief. Consequently, questions by the prosecution during his cross-examination were limited to confirming the role of violence in the planned robberies<sup>241</sup> and Ian's acceptance of violence and ultimately murder, as evidenced through his 'enjoyment' of the works of De Sade.<sup>242</sup> The main debate between Ian and the prosecution was whether the pornographic/violent material was normal, or abnormal and offensive, and thus whether his portrayal of his appropriate masculine violence was legitimate. Ian maintained its normality and minimised its abnormality, calling it, for example, 'off beat'<sup>243</sup> and describing it as of social and medical interest.<sup>244</sup> In contrast, the prosecution described the books as 'squalid',<sup>245</sup> and 'dirty'.<sup>246</sup> The prosecution specifically countered Ian's blasé attitude and his minimisation of the materials by describing him as an 'expert' with much experience<sup>247</sup> or as a connoisseur,<sup>248</sup> thus strengthening the association between Ian and violence/pornography. In particular, the prosecution fortified the role of pornography and violence in the murders by linking it to each death: through the photos of Lesley Ann, through the suitcase contents in the case of Edward and through a passing remark when discussing the photographs of John Kilbride's grave: 'You were accustomed to taking photos, both pornographic and non-pornographic.'<sup>249</sup> Ian's interest in the masculine discourses of violence and pornography was therefore rendered both abnormal and dangerous through this construction and so therefore was his masculinity.

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<sup>238</sup> p8. This pattern is also a prosecutory tactic however as Ian's explanation for the death of Edward is based on David's equal involvement and so it is in the interest of the prosecution's case to show that Ian was a dominating influence.

<sup>239</sup> A record which includes five offences including both GBH and ABH.

<sup>240</sup> Provocation in the non-legal sense of the word, rather as an excuse for his behaviour in the past. p41

<sup>241</sup> p13

<sup>242</sup> p17

<sup>243</sup> p30

<sup>244</sup> p18

<sup>245</sup> p18

<sup>246</sup> p30

<sup>247</sup> p32

<sup>248</sup> p41

<sup>249</sup> p4



In addition to reconstructing Ian's violence as abnormal the prosecution construed it as cold and calculated. The widely discussed body disposal plan in Ian's testimony was used by the prosecution as the basis for an additional theme of militarisation, which brought together the two previous themes. Its use corresponds with the traditional perception of the military as masculine. Militarisation was used to emphasise Ian's cold and calculated intentions and was woven into Ian's cross-examination through the language adopted by the prosecution. For example:

‘This armoury – the equipment rather, that you were needing.’<sup>250</sup>

The theme was maintained throughout the cross-examination as the prosecution talked about ‘reconnaissance’,<sup>251</sup> ‘cracksmen’,<sup>252</sup> ‘other triumphs in the field of murder’,<sup>253</sup> ‘the exercise of murder’,<sup>254</sup> ‘technique for planning a murder’<sup>255</sup> and the ‘cleaning operation’.<sup>256</sup> Even Ian's relationship with David was transformed into military terminology, which is particularly useful in establishing a hierarchy: instructor,<sup>257</sup> trainee,<sup>258</sup> confederate,<sup>259</sup> and disciple.<sup>260</sup> The application of this discourse to Ian resulted in the construction of a man unconcerned with the consequences of his actions, a cool calculating killer.

### **The Absence of the Application of Masculine Discourses to Myra**

The discourse of masculine militarisation and its absence in Myra's testimony affirms the non-application of masculine discourses to her. The appearance of militarisation in Myra's testimony took a different form to that in Ian's. It conceded that her involvement was lesser and betrayed the concession made to her femininity by the prosecution

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<sup>250</sup> p28

<sup>251</sup> p4, 23, 56, 2

<sup>252</sup> p13

<sup>253</sup> p9

<sup>254</sup> p9

<sup>255</sup> p24

<sup>256</sup> p6

<sup>257</sup> p13

<sup>258</sup> p13

<sup>259</sup> p29

<sup>260</sup> p13



through their limited acceptance of her passive subordinate role. It was used only to describe the relationship between Myra and Ian; she was his faithful ally and supporter<sup>261</sup> or colleague.<sup>262</sup> The prosecution's failure to use a potentially damaging and entirely fabricated discourse in their attack on Myra illustrates their reluctance to engage in constructions of Myra as masculine, despite the fact that this construction would assist the portrayal of a woman capable of murder.

Furthermore, violence did not feature in Myra's cross-examination, and pornography hardly featured at all, both remained within the male testimonies. Despite being the owner of a cosh and guns and at the very least, aware of the violent and pornographic books that were found in her house, the discourse of violence did not appear in Myra's testimony. Her cruelty was exposed only through the specific incidents of the deaths of Edward and Lesley Ann. The objects with which she was associated, for example the cosh, remained largely uncommented upon. Further, her association with pornography was predominantly accepted as vicarious. The violent propensities of Ian and David however, were emphasised and therefore formed a theme in their testimonies; an exclusively masculine theme.<sup>263</sup>

The construction of Myra as feminine and Ian as masculine retained the male/female dualisms identified in chapter one. That is, although Myra and Ian were deviant examples of their sex/gender, they were none the less male/masculine and female/feminine. Consequently, they could be viewed as a partnership; a partnership to which traditional understandings of power apply, which may explain the prosecution's limited acceptance of Myra's defence of subservience. However, in order to retain the dualistic construction of Ian and Myra, masculine discourses which could have been applied to both were used only in the construction of the male players.

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<sup>261</sup> p98

<sup>262</sup> p93

<sup>263</sup> Violence is used in the cross-examination of David as a means of proving his involvement in and equal responsibility for the murders by illustrating his violent motives. Conversely associations of David and violence are minimised by the prosecution.



## Conclusion

The implicit challenge to Myra's femininity, which was inevitably provoked by the nature of her alleged crimes, immediately raised the issue of her non-conformity. In response, from the time of their arrest, Myra and Ian conspired to present her as normal in support of her plea of innocence. It is unlikely however that the use of gender as part of this portrayal was conscious. Gendered stereotypes constituted part of their perceptions of normality. This is also true of counsel and thus feminine norms were reflected in their portrayal of normality, rather than constituting themes in the constructed cases. This hypothesis is perhaps most strongly supported by the fact that the gendered constructions did not run throughout the trial, but featured only in a limited number of testimonies. This suggests that they were being used to attack character, or as generalisations. These generalisations and constructions of character were intended to aid the jury in making sense of the evidence placed before them and in interpreting it in a way that was consistent with the defence's narrative and ultimately their theory. In this case therefore, the presentation of Myra as 'normal' (subordinate in her relationship with Ian, feminine in the nature of her relationships and maternal) supported the contention that she was 'caught up' in two minor criminal acts that went wrong, merely as a consequence of her relationship with Ian.

The construction of Myra by the defence in terms of 'normal' femininity took two forms; the general feminisation of Myra, that is the portrayal of her within the confines of traditional femininity through the spaces that she inhabited, her behaviour, emotions, relationships, and the non-application of traditionally male discourses. This construction provided a 'background' against which the second stage of her defence, the removal of her agency and therefore responsibility was more easily constructed and accepted. Both strategies were countered to some extent by the prosecution with alternative constructions. Most prominent in the attempted construction of Myra by the defence was the 'reconstruction' of her role as maternal placator in the events leading to the death of Lesley Ann. This portrayal exploited Myra's femaleness in order to feminise her role in Lesley Ann's stripping, gagging and photographing. This use of this construction was almost certainly conscious, although again it is unlikely that Ian, Myra or the defence explicitly recognised the utility of employing constructions of femininity.



The prosecution however, easily discarded all these constructions through the evidence (see above) which defeminised Myra: most explicitly the tape of Lesley Ann's stripping and gagging, a medium which is highly emotive. In their cross-examinations of Myra and Ian, the prosecution's response to the defence's attempted feminisation of Myra relied heavily on the tape of Lesley Ann. This facilitated the strongest, and possibly the most explicit gendered construction of Myra in the trial, that is as sexually aggressive. By strengthening the significance of her sexuality through manipulation of her relationship with Pat, Myra's already inappropriate sexuality became deviant as it appeared both aggressive and bisexual. The demonisation of Myra's femininity was furthered through the prosecution's construction of her relationship with the victims, which crushed the defence's attempts to maternalise her. Thus, the defence's attempted feminisation of Myra failed.

The discourse of feminine passivity was to some extent successful. The prosecution evidently accepted her passivity to a degree. This is likely to be because it was so deeply embedded in society's understanding of femaleness that it permeated even the prosecution's case. To rebut the presumption of the association of femaleness/ passivity would be to challenge the presumed nature of woman, which the prosecution evidently could not do, as evidenced by the non-application of masculine discourses to Myra. To some extent therefore the prosecution were trapped by their location within the constructed world. Their limited acceptance of her passivity was in spite of the fact that it was easily countered by evidence of her interaction with the victims (predominantly through the tape recording of Lesley Ann) and the construction of her aggressive sexuality. Thus, her actions were constructed by the prosecution in terms of omission rather than action. Furthermore, she was permitted lesser responsibility by the prosecution who sought to elicit excuse or justification from her whilst maintaining that none was available to Ian. Myra colluded with this interpretation by accepting responsibility, lamenting her involvement and presenting herself passively to the court. Ultimately in addressing Myra's subordinate role the prosecution conceded some way to the construction presented by the defence. This is perhaps evidence of the strength of the entrenchment of the construction of gender roles in the 1960s.



It is clear from the transcript that the exploitation of discourses of femininity by the defence had limited use, as constructions based on notions of deviant femininity and the physical evidence against her <sup>264</sup> were ultimately more powerful. Furthermore, by resorting to discourses of femininity and normality the defence raised issues that were easily countered by the prosecution. It was the portrayal of Myra as sexually deviant and as active in relation to the victims by the prosecution which would undoubtedly have been most effective in rebutting the notions of feminine conformity the defence were seeking to raise as generalisations in order to foster acceptance of their story / theory.

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<sup>264</sup> Particularly given the extent of her admissions: Myra admitted limited involvement in the death of Edward and in the stripping and photographing of Lesley Ann.



## Chapter Five

### **The Trial of Rose West**

#### **The Facts**

In 1995 Rosemary West was tried for the murders of ten girls. The girls had been killed between 1971 and 1987. Most (excluding Charmaine West, Shirley Robinson and Heather West) had been sexually assaulted, raped and tortured prior to death.

Charmaine West (Disappeared spring/early summer 1971, aged 7)

Charmaine was Rose West's step-daughter. Her body was found in the coal cellar of a house in Midland Road that had been occupied by Fred and Rose West at the beginning of their marriage. There was no evidence that Charmaine had been sexually assaulted or subjected to the bondage evident in many of the other cases. It was the contention of the prosecution that Charmaine had been killed by Rose whilst Fred was in prison. A substantial amount of time and effort went into fixing the date of Charmaine's death. The date was fixed to within a few months using photographs and dental evidence. In fact it seems that the 'window' may have been wide enough for Fred to have been out of prison at the time of death.

Lynda Gough (disappeared April 1973, aged 19)

Lynda Gough lived at home with her parents. She became friends with one of the lodgers of 25 Cromwell Street, the second home of Fred and Rose West. She subsequently spent some time at Cromwell Street and developed sexual relationships with a number of the tenants who lived there. In April 1973 she left a note at her parents home telling them that she had found a flat and would be in touch. Lynda Gough's mother traced her to Cromwell Street but was told she had moved on. Her body was later discovered buried in 25 Cromwell Street. It is likely that she was sexually abused and killed in the cellar at Cromwell Street.



Carol Cooper (disappeared November 1973, aged 15)

Carol Cooper was in care in the Gloucestershire area. It is likely that like many girls in her situation she developed links with the Wests and was a visitor to Cromwell Street. She was last seen alive ostensibly leaving to spend the weekend at her mother's home. Her body was later discovered buried in 25 Cromwell Street. It is likely that she was sexually abused and killed in the cellar at Cromwell Street.

Lucy Partington (disappeared December 1973, aged 21)

Lucy Partington was a student of Exeter University. She had returned home to the Gloucestershire area for the Christmas vacation. On the day she disappeared Lucy had been visiting a friend and had left to return to her mother's. Her body was later discovered buried in 25 Cromwell Street. It is likely that she was abducted from a bus stop, sexually abused and killed in the cellar at Cromwell Street.

Therese Siegenthaler (disappeared April 1974, aged 21)

Therese Siegenthaler, originally from Switzerland, was a student at Woolwich College. In April 1974 she set off hitchhiking her way to Holyhead to catch a ferry to Ireland to meet a friend. Her body was later discovered buried in 25 Cromwell Street. It is likely that she was picked up by the Wests, sexually abused and killed in the cellar at Cromwell Street.

Shirley Hubbard (disappeared November 1974, aged 15)

Shirley Hubbard lived with her foster parents. It is not known whether she knew the Wests or not. She had been visiting her boyfriend for the day. He put her on the bus home, but she was not seen alive again. Her body was later discovered buried in 25 Cromwell Street. It is likely that she was sexually abused and killed in the cellar at Cromwell Street.



Juanitta Mott (disappeared April 1975, aged 18)

Juanitta Mott left home at the age of 15 and lived in various bedsits (one of which was Cromwell Street, although not at the Wests house) before moving in with one of her mother's friends. She disappeared in April 1975. Her body was later discovered buried in 25 Cromwell Street. It is likely that she was sexually abused and killed in the cellar at Cromwell Street.

Shirley Robinson (disappeared May 1978, aged 18)

Shirley Robinson had been in the care of the Local Authority when she met and moved in with the Wests. She effectively became a member of their family and eventually became pregnant by Fred. Some tension developed between her and the Wests (especially, it was said at the trial, between her and Rose) toward the end of her pregnancy. She disappeared in the eighth month of the pregnancy. When her body was found at Cromwell Street it was evident that the baby had been removed from her womb, but there was no evidence of bondage as with the other victims.

Alison Chambers (disappeared September 1979, aged 17)

Alison Chambers was in residential care at the time of her disappearance. She is known to have been a regular visitor at Cromwell Street. Her body was discovered buried in 25 Cromwell Street. Like many of the other victims, it is likely that she was sexually abused and killed in the cellar at Cromwell Street.

Heather West (disappeared June 1987, aged 16)

Heather West was the daughter of both Fred and Rose. At the time she disappeared there was tension between her and her parents, it was suggested during the trial that she was planning to run away and disclose what had been going on at Cromwell Street. Her body was discovered buried at the house. There was no evidence of sexual abuse or bondage directly prior to her death.



Although the bodies of all these victims were discovered at Cromwell Street, with the exception of Charmaine who was found buried at their previous address, there was a difficulty in proving Rose West's involvement in their murders. Fred West confessed to all these killings, along with the killings of his previous wife (Rena West) and their childrens' 'nanny' (Anne McFall, who was pregnant with Fred's baby at the time of death).<sup>1</sup> Fred claimed not only was Rose not involved in the killings, but also that she had no idea that they took place. He committed suicide prior to trial, leaving a note for Rose describing his love and devotion to her. This note featured in the trial as evidence of their bond, which the jury were asked to infer meant that they were both involved in the killings.

However, Fred's suicide whilst on remand meant that Rose's involvement in the killings was going to be difficult to prove, predominantly because he was not available for cross-examination. It may also be argued that the need to secure a prosecution against Rose increased, as justice needed to be seen to be done. For this to happen someone needed to be held responsible and convicted of the killings. Following Fred's death, therefore, the prosecution set about finding evidence to link Rose to the deaths. They discovered evidence relating to other girls who could testify that they had been sexually abused, assaulted and raped by Fred and Rose, both jointly and independently. This, the prosecution would argue, provided evidence that *both* Fred and Rose were involved in sexual abuse of girls and young women and that the deaths of most of the victims had occurred as a consequence of similar joint abuse. Charmaine West, the first victim, they argued was killed by Rose who abused her (although not sexually) whilst Fred was in prison. According to the prosecution case, Shirley Robinson was probably killed by Rose acting alone because she posed a threat to Rose and Fred's relationship. Heather West was killed by them both because she was going to leave home and disclose the truth. The other victims, they argued, were killed in the course of, or following, sexual abuse.

Evidence of Rose West's involvement in sexual abuse and rape was allowed under the similar fact rules. These rules state that if evidence bears a 'striking similarity' to the

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<sup>1</sup> Both were found buried in a field known and used by Fred.



facts of a case it may be heard.<sup>2</sup> The testimonies of these victims were crucial for the prosecution, providing the only evidence to link Rose to the murders. The witnesses were:

#### Caroline Owens

Caroline Owens was employed as a nanny by the Wests in 1973 but left within months. She was later hitchhiking in the area and was picked up by the Wests, knocked out and taken back to Cromwell Street. There they sexually assaulted her. After leaving the house she reported the attack. Both Fred and Rose pleaded guilty to indecent assault and were fined. In the murder trial Caroline revealed that she was also raped during the attack.

#### Miss A

Miss A was living in a children's home close to the home of the Wests. She was introduced to them by a friend and began to visit them. During the trial she describes how, during one such visit, Rose began to touch and kiss her. On another occasion she was led to a bedroom where she witnessed another girl being assaulted and raped by both Fred and Rose, and was then assaulted and raped herself. She was then allowed to leave the house.

#### Miss X

Miss X was introduced to the West's by her boyfriend during her late teens. She went on to visit Rose alone on several occasions. On her two last visits she engaged in consensual sexual activity with Rose.

#### Anne Marie Davis

Anne Marie was the daughter of Fred West and his dead wife Rena. Anne Marie

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<sup>2</sup> DPP v Boardman (1975) AC 421, (1974) WLR 673.



testified that she was sexually abused by both Fred and Rose and many visitors to Cromwell Street until she eventually left home and married.

Kathryn Halliday

Kathryn Halliday lived in a neighbouring house in Cromwell Street. Fred introduced her to Rose. She maintained a sexual relationship with Rose for several months. The sexual activities sometimes involved Rose, Kathryn and Fred.

## **The Trial**

### **The Theories of the Case**

#### **The Prosecution**

It was the case of the prosecution that Rose was equally involved in the killings, perhaps even that she was solely responsible for the deaths of Charmaine West and Shirley Robinson. They based this argument upon the notion that Rose must not only have known about the killings, but that the evidence of the sexual abuse of the others who testified in the trial, the surviving victims, illustrated her active involvement in abuse and thus bridged the gap left by a lack of evidence connecting her directly to the deaths. They suggested that the testimonies of these victims illustrated that the killings formed a part of a more general 'career of abuse' and a pattern of cruelty. Thus they argued for her agency and active involvement, rather than her dependence on and subordination to Fred.

#### **The Defence**

It was the case of the defence that Rose was not involved in any of the killings. Whilst they conceded her involvement in the attack on survivor Caroline Owens, they claimed that Rose was there only under sufferance. This introduced the theme of domination / subordination which then ran throughout the trial. It was also contended by the defence that the evidence of the surviving 'victims' was exaggerated or fabricated for financial gain.



## The Role of the Opening Speeches

It is in the opening speeches that the themes of the trial are first identified and set out for the jury.<sup>3</sup> In terms of the techniques of courtroom lawyering the speech should reflect the narrative that will be subsequently developed in the main trial. The story should be told in a plain style which captures the attention of the audience and draws on themes and ideas they can relate to.<sup>4</sup> This framework of narrative and important themes or issues should then be used by the jury to understand and interpret the evidence which follows.

The importance of gender in the prosecution's case in Rose's trial is evidenced by the fact that the two main themes of femininity (sexuality and maternity) were clearly identified in the opening speech. As is typical in adversarial trials, the main thrust of defence opening speech was to counter the case promised by the prosecution. To do so the defence needed only to puncture the prosecution case by revealing inconsistency, error, falsehood or improper motive.<sup>5</sup> In their opening speech the defence identified the 'doubts' they intended to raise with regard to the prosecution case. Specifically they raised questions about the reliability of prosecution witnesses and pointed out that Fred West could have committed the murders in the way described by the prosecution without the knowledge or the assistance of his wife.

This approach set the pattern for the trial as a whole; the defence tactic was to accept the main points of the prosecution story in relation to Fred (as there is no need for them to challenge this) but to redefine<sup>6</sup> elements relating to the involvement of Rose. This tactic adopted by the defence meant that by accepting much of the prosecution evidence, for example, the identities of the dead girls, the approximate times of their deaths etc, the focus on the trial was shifted. The trial did not seek to answer questions such as where

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<sup>3</sup> Anderson and Twining *'Analysis of Evidence: how to do things with facts'* London Weidenfeld and Nicolson (1991), p259-264.

<sup>4</sup> R DuCann *'The Art of the Advocate'* Harmondsworth, Penguin (1964), Ch 4.

<sup>5</sup> P Rock *'The Social World of an English Crown Court'* Clarendon Press, London (1993) p32.

<sup>6</sup> Redefinition is a method described by Bennett and Feldman (*'Reconstructing Reality in the Courtroom'* London, Tavistock Publications (1981), p99) the method involves selecting and redefining a weak element of the prosecution story ensuring that it is one which is important enough to enable the defence



did and how the victims died, etc, rather the approximate times, places and means of death were agreed. The trial focused upon argument as to whether Rose was *also* involved. The prosecution sought to define her character in such a way as to persuade the jury that the answer to this question had to be that of course, Rose was involved. The defence sought to redefine her character so that her involvement could not be implied. Essential in this defence redefinition was the 'reconstruction' of Rose West in a manner which countered that set up by the prosecution, a construction which later played a major part in the defence story or narrative. This reconstruction was achieved predominantly through the testimony of Rose herself.

### **Discourses of Femininity: the prosecution**

The two key themes of femininity in the trial were maternity and sexuality. The prosecution case employed only these constructions in its portrayal of Rose. Both themes were inevitably employed negatively and provided the basis for the defeminisation of Rose which culminated in her construction as masculine. This was very different to Myra Hindley's construction by the prosecution; her construction was achieved through multiple discourses which merely evidenced her abnormality and were used to attack her character. That was not the case in Rose West's trial. The prosecution focused specifically on two themes, both of which played a crucial role in their case. Central in the formation of both the themes, but especially important in the construction of deviant femininity, was the similar fact evidence, the inclusion of which was contested by the defence, but was eventually allowed by the judge.

Rose's most apparent feature was her status as mother. This is something which was already clear to the jury through the newspaper coverage which preceded the trial and which was confirmed by her 'mumsy' appearance.<sup>7</sup> It is unsurprising, therefore, that her status as a mother is the first topic of the prosecution opening speech, although her performance of this role is not attacked at this stage of the trial.. In Myra Hindley's trial, her maternity was only attacked by the prosecution in response to the defence's attempt to use it to explain her behaviour. This is perhaps because Myra was not a mother and so this was not an issue the prosecution expected the defence to raise. In addition, Myra's

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to restructure the story after the redefinition of the key element.



appearance starkly contrasted with such a representation, which, was therefore less credible.<sup>8</sup>

## **Maternity**

Surprisingly, the opening speech did not condemn Rose West in terms of maternity, although this was an important theme in the rest of the prosecution case. This is perhaps because advocacy manuals warn against an open and seemingly unfounded attacks on the defendant, which may set the jury against the prosecution from the outset.<sup>9</sup> Thus, Rose's perverse maternity was introduced in a comparatively 'gentle' manner in explaining her first murder, that of her stepdaughter Charmaine. This murder was rationalised by the prosecution through the pressure which she was under and the problems which she undoubtedly experienced with three young children whilst Fred was in prison, and the special difficulties she experienced in controlling Charmaine. Nor did her patently bad (bad in terms of sexual abuse and violence) motherhood feature in the opening speech. Thus, there was an air of apparent sympathy present in this opening speech, albeit one that suggests she was a killer. The full extent of Rose's 'bad' motherhood was brought out almost solely through the testimonies of prosecution witnesses. To introduce such claims in the opening speech, particularly without directly supporting evidence or without having first established supporting themes such as deviant sexuality,<sup>10</sup> would have appeared to the jury an unwarranted attack on her character.

Having said that, however, maternity inevitably formed a substantial theme of the opening speech, and indeed the prosecution case, as it was their contention that Rose West killed her stepdaughter Charmaine and her daughter Heather. The first piece of information that was passed to the jury is that Heather, who was in fact the last victim but was the only natural child<sup>11</sup> of Rose West to be killed, was murdered by the Wests. In adopting this approach to the case the prosecution disrupted the chronological order of the deaths. This was a significant move on their part. They sacrificed narrative

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<sup>7</sup> See Joan Smith 'Unnatural Born Killers' The Independent on Sunday Aug 31 1997.

<sup>8</sup> As evident from her notorious mugshot.

<sup>9</sup> Eg R DuCann '*The Art of the Advocate*' Harmondsworth, Penguin (1964).

<sup>10</sup> Note that themes of bad maternity and sexuality are symbiotic, see 'Sexuality' Ch 2.

<sup>11</sup> '... the first child of her union with Fred West' 9/10/95 p26.



structure for a thematic structure; dealing with what they hoped would be perceived as the most heinous crimes first. This too is indicative of the importance of the construction of perverse maternity in their case. Both Heather and Charmaine formed an essential part in the prosecution case for two reasons. First, because Rose's plea of ignorance seemed less plausible when two of the victims were her own children. Second, and most importantly in terms of the perspective of this thesis, whether or not she admitted to the murders, she had failed as a mother in neglecting to make adequate inquiries about the whereabouts of her children. This failure then went to support not only the allegation that she was involved in all the deaths, but also, the main proposition of the prosecution as it established the theme, developed later in the trial, of her absolute rejection of motherhood and thus femininity. It was Rose's indifference to the disappearance of the two girls that, in the opening speech, introduced the theme of her deviant maternity:

'It was as though she (Charmaine) had never existed.'<sup>12</sup>

'... not a word of concern expressed by her (Heather's) mother.'<sup>13</sup>

For these reasons both Heather and Charmaine's murders constituted separate categories<sup>14</sup> in the prosecution opening speech, although it was Heather who seemed to play a pivotal role as it was with her that the speech both begun and ended. She was perhaps considered the most important victim in terms of persuading the jury that Rose must have known and been involved being the only natural child of both Fred and Rose to have been killed. In addition, this argument supported the theme of deviant maternity.

As the prosecution progressed, however, and the image of Rose West as a bad mother became more established, so the strength of the accusation also progressed. What was a tentative accusation became first strengthened and justified by the comparison of Rose with the mother of one of the victims, Lynda Gough. Mrs Gough's tenacious efforts to

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<sup>12</sup> 6/10/95 p16

<sup>13</sup> 9/10/95 p27

<sup>14</sup> The categories used and identified by the prosecution, and explained to the jury, are: Charmaine, setting the scene, the start, November 1973 to April 1975, 1977 to 1979, Heather, the police investigation, the indictment.



find her daughter were described by the prosecution and implicitly contrasted with Rose West's own failure:

‘Not surprisingly, and you may think it entirely natural for parents, the Goughs were extremely worried about where their daughter was.’<sup>15</sup>

Once this ‘groundwork’ was laid by the prosecution, the opening speech became a great deal more accusatory in relation to the theme of maternity. The speech became forceful in its accusations:

‘... Rosemary West participated in the killing of her own daughter.’<sup>16</sup>

and the accusations themselves became ones of violent abuse, eventually linking Rose's bad motherhood to the murder of Heather:

‘... and Rosemary gave Heather more than a good hiding.’<sup>17</sup>

These and other such remarks in relation to Heather concluded the opening speech and prefigured the concentration on Rose's abusive parenting that was to follow. As concluding remarks in the opening speech, however, they introduced this theme and began to create prejudice against Rose.<sup>18</sup>

This theme did not take off immediately, however. The first witness for the prosecution was Rose's mother, Daisy Letts. In spite of being a prosecution witness, Daisy Letts' cross-examination illustrated that she was clearly allied with the defence, thus, she had only good things to say about her daughter as a mother, even in her examination in chief:

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<sup>15</sup> 6/10/95 p43

<sup>16</sup> 6/9/95 p102

<sup>17</sup> 6/9/95 p102

<sup>18</sup> Comment in the opening and closing speeches is known to create prejudice. T Sargant and P Hill ‘*Criminal Trials; The Search for truth*’ Fabian Research Series No 348 Oct (1986) p13.



‘Rosy always seemed to keep them nice and keep their hair nice, and they seemed alright when they were with her.’<sup>19</sup>

It was only when pressed that she revealed that there was a time when Rose left Charmaine alone in the house, this was fully exploited by the prosecution, whose questioning takes up three pages of the transcript, as they attempted to undermine Daisy’s version of Rose as a good mother.

The contents of the testimonies that followed demonstrated that Rose West was not only an inadequate mother in that she neglected her children, as argued in the opening speech, but also that she was an abusive and violent mother, as again briefly introduced in the opening speech. The first of these did not receive a great deal of attention from the prosecution but was, none the less, evident in the testimonies. For example, it was evident that the children slept in the basement and again there were references to Rose’s failure to attempt to locate her missing daughters or demonstrate concern about them and the contrasting concern of others over them or their own children.

With the availability of more extreme evidence, however, the significance of Rose’s neglect diminished as a number of witnesses were called to attest a more poignant illustration of her deviance as a woman; her abuse of and contempt for her own children. The evidence which directly followed, and thus countered Daisy Letts’ testimony, described an occasion when Charmaine was beaten by Rose with a belt whilst standing on a chair with her hands tied behind her back.<sup>20</sup> Rose’s feelings toward Charmaine were captured in Rose’s reported attitude following her disappearance:

‘She is gone to her mothers and good bloody riddance.’<sup>21</sup>

This portrayal of Rose’s lack of any maternal feeling was to be almost exactly mirrored in the stories of Heather’s disappearance which followed almost two decades later. However, it’s implications for her femininity were greater as, unlike Charmaine, Heather was Rose’s natural daughter. Again, evidence was brought that Heather was

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<sup>19</sup> 9/10/95 p57

<sup>20</sup> Given by Rose’s neighbours Shirley Giles and Tracy Hammond.



physically abused<sup>22</sup> and that Rose demonstrated no maternal feeling for her; for example, in explaining Heather's withdrawal Rose had accused her of being 'backward'.<sup>23</sup> As in the evidence relating to Charmaine, however, it was her attitude following Heather's disappearance which was most telling. She was reported as saying:

'I'm not bothered whether she's dead or alive.'<sup>24</sup>

The assumed 'unnatural' nature of Rose's attitude was again clearly demonstrated to the jury by the comparison of her attitude to that of the witness:

Witness 'I said well, if that had been one of mine I would have been worried sick, but Rose didn't seem to care at all.

Counsel What was your reaction to that?

Witness I was quite surprised about it. If one of your children goes missing you like to know where they are. I know I would'<sup>25</sup>

In these testimonies the prosecution were making an implicit comparison of good and bad femininity. These testimonies and other more general evidence pertaining to Rose's attitude toward the children,<sup>26</sup> rendered the relationship between Rose and the children problematic and Rose's behaviour toward them cruel and uncaring.

The most effective and pertinent attack on Rose's maternity was made through the testimony of Anne Marie, her stepdaughter. Anne Marie's testimony was saved until the final part of the prosecution case. Therefore, it became the culmination and the confirmation of the third party (similar fact) evidence that had formed the most substantial part of the prosecution case. Anne Marie provided a distressing first hand account of the years of cruelty and abuse, both physical and sexual, that she was subjected to by both her father, Fred, and Rose. Inevitably the focus of the questioning was on the actions of Rose.

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<sup>21</sup> Tracy Hammond p145 9/10/95.

<sup>22</sup> This takes the form of indirect evidence, for example of the sound of children screaming (17/10/95 p12), and more specific evidence, for example, Fred telling a friend that Rose gave Heather 'a good hiding' (17/10/95 p43).

<sup>23</sup> 17/10/95 p23

<sup>24</sup> 17/10/95 p55, also see p60 : 'She just wasn't bothered and that was the end of it' and p85.

<sup>25</sup> 17/10/95 p55



Anne Marie's testimony was constituted by a series of 'stories' or 'narratives' which recounted various childhood experiences. Each of the stories, whilst guided by counsel, took the form of a free narrative. The free narrative approach to testimony is known as 'unleashing the witness'. This examination technique is a powerful tool for the prosecution. Allowing the witness to recount their own version of events unhindered, it captures the interest of the jury and relaxes the witness, and, thus, the story appears to be less 'manufactured' and distorted and is more likely to be believed.<sup>27</sup> Anne Marie's testimony opened with a series of short narratives which described her early childhood, during which she was frequently smacked and beaten by her stepmother. One story recounts the time when, in response to the bad behaviour of her sister, Anne Marie's head was cut open when Rose hit her with a bowl.<sup>28</sup> These events, however, merely provided an introduction to the horrific tales that were to follow. The testimony focused upon two particular occasions when the physical abuse of Anne Marie was coupled with sexual abuse. The most important feature of these stories was the active role played by Rose and the perverse use of parenthood by Rose and Fred to justify Anne Marie's treatment.

Anne Marie described how attack Fred and Rose performed an 'operation' on her and then raped her:

'I was told that I should be grateful that I have such caring parents ... and I was led to believe that all parents were acting the same.'<sup>29</sup>

It is Anne Marie's 'natural' trust in her parents and the pain that she endured and accepted as a consequence of that trust which compounds the perverted exploitation of parenthood:

'I just wanted the hurt to go away, but I also felt that I shouldn't be so ungrateful because they were doing this to help me.'<sup>30</sup>

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<sup>26</sup> For example that the children were made to sleep in the basement/cellar whilst a special room was reserved for Rose's 'clients': Elizabeth Brewer 10/10/95 p138 and David Gardner 13/10/95 p69.

<sup>27</sup> R DuCann *'The Art of the Advocate'* Harmondsworth, Penguin (1964), Ch 5.

<sup>28</sup> 18/10/95 p90

<sup>29</sup> 18/10/95 p96

<sup>30</sup> 18/10/95 p96



Although the story told is one involving the actions of both her parents, Rose's role throughout, although not dominant, was the subject of most attention.<sup>31</sup> Her role in the attack and its incongruity with femininity is amplified by her apparent return to maternity after the attack has concluded:

'Afterwards she was so nice, you know helped me clean myself up.'<sup>32</sup>

'(she) used to run a bath and put salt in it and she would say that it would sting but it would make it feel better and would heal it ... she was so kind to me.'<sup>33</sup>

This vacillation between maternity and cruelty featured heavily in the prosecution's construction of Rose. When fully developed it illustrated Rose's willingness to exploit her femaleness and to adopt a maternal guise in order to entrap her victims.

The second main story told by Anne Marie in her testimony embodied this perverse use of femininity and maternity by Rose. Under the guise of taking Anne Marie, then aged thirteen, out for the night Rose took her to a pub where she got her drunk. On the way home Fred picked them up, as apparently arranged, and Anne Marie was raped by both Fred and Rose in the back of the van. Rose's exploitation of her role was made clear in the testimony through Anne Marie's apparent trust in her despite what had happened in the past and her excitement in the run-up to the outing:

'It was like going out with my big sister.'<sup>34</sup>

She described how later, during the attack, Rose explicitly rejected this role, quoting her as having said:

'If you think you're going to be friends with me then you've got another thing coming.'<sup>35</sup>

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<sup>31</sup> See below.

<sup>32</sup> 18/10/95 p97

<sup>33</sup> 18/10/95 p102

<sup>34</sup> 18/10/95 p107

<sup>35</sup> 18/10/95 p108



Anne Marie's testimony necessarily involved a description of the abuse she suffered at the hands of both Fred and Rose. Whilst the defence during their cross-examination inevitably attempted to draw attention away from the acts committed by Rose (and in fact flatly denied her involvement) by questioning Anne Marie about the sexual abuse by her father, the prosecution ensured that Rose's involvement was reported at every stage of the questioning. Consequently, although Fred did not take a secondary role in the abuse as reported by Anne Marie, he was not the main focus of the prosecution questioning. This technique was frequently used in the examinations in chief of the prosecution witnesses. Whilst it is explicable, in part, by the fact that the trial was a trial of Rose and not Fred, it is a technique that was also crucial in the construction of Rose's active role. It was the construction of Rose as positively rejecting her feminine, maternal role and as adopting an abusive, destructive role which was to become the main focus of the questioning. Rose's rejection of her proper role in the family and the home was then compounded as Anne Marie mitigated her father's involvement and concurrently condemned Rose for the destruction of the family:

‘I used to look forward to when my dad came home and I used to give him a cuddle and a kiss ... Rose would make sure me and my father did not have time together.’<sup>36</sup>

This evidence was not evidence of murder but, like so much of the prosecution testimonies, was designed to excite prejudice against Rose, who appeared to be destructive to the family, contrary to the feminine role of maternity.

The construction of Rose's destructive influence in the family was further facilitated by her disassociation from the family. This disassociation was effected by neglecting to mention the relationships between Rose and others during their testimonies. For example, during the closing speech, background information concentrated not on her family background but on past addresses or the layout of 25 Cromwell Street. This is similar to the approach noted in Myra's trial. She too was disassociated from 'normal' relationships through testimony. This technique 'displaces' women defendants, whose

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<sup>36</sup> 20/10/95 p56



femaleness would lead to the presumption of the importance of family and relationships in their lives.<sup>37</sup>

These examples of Rose's behaviour toward Heather, Charmaine, Anne Marie were coupled with the more implicit evidence of her neglect and abuse of the other children, including evidence that she was aware that Fred was having sex with the children.<sup>38</sup> When viewed as a whole, this evidence resulted in the construction of the children as victims of their mother, the very person who should care for them. This construction was exemplified by the submission of the list of all the children's names and dates of birth which formed a catalogue of victims.<sup>39</sup> When combined with other evidence, such as Rose having worked as a prostitute in the family home, she became the antithesis of woman as the guardian of the hearth, home and family, whereas Fred appeared only occasionally as an 'abuser'<sup>40</sup> who was nonetheless adored and forgiven by his daughter.

The prosecution's theme of the adoption of femininity, specifically maternity, as a guise, to facilitate the abuse of her children, was also taken up in relation to other victims external to the family. During the prosecution case this was evidenced in two ways. First, the evidence of Caroline Owens described Rose as using her children to entice Caroline into the house. Caroline, was invited to move into the house as a nanny within minutes of meeting the Wests, something which the prosecution identified as 'remarkable'.<sup>41</sup> Caroline was later indecently assaulted and raped by the Wests.

Second, Rose's femaleness was identified by the prosecution as a symbol of safety. This use of femininity as a symbol of safety was also evident in Myra's trial, although in that case it was raised by the defence. In Rose's trial this image was used by the prosecution against Rose. She was portrayed as using her femaleness to encourage girls to get into the car with her and Fred:

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<sup>37</sup> C Gilligan *'In a Different Voice: psychological theory and women's development'* Cambridge, Mass, Harvard University Press (1993).

<sup>38</sup> 17/10/95 p93

<sup>39</sup> 10/10/95 p28, see Appendix 1.

<sup>40</sup> A role associated more with to men than women .

<sup>41</sup> Opening speech 6/10.95 p35.



Counsel 'It must have appeared safe because there was a couple in the car, a man and wife.'<sup>42</sup>

This use of 'femaleness' was developed through the prosecution case into the specific use of maternity to encourage young girls, often those in care, to the house:

Counsel 'Mrs West who was involved in enticing and encouraging ... a number of the victims to Cromwell Street.'<sup>43</sup>

The use of Rose as a symbol of safety was perhaps best evidenced in the testimony of Miss A. Miss A described Rose as 'like a big sister-come-mum'.<sup>44</sup> She described how, having been in care for sometime, she adopted Rose as a mother figure who provided 'a shoulder to cry on',<sup>45</sup> and with whom she chatted about the home and other 'girls talk'.<sup>46</sup> However, Rose later transformed from a mother figure, into Miss A's abuser. However, even during the abuse Miss A identified Rose as being 'like Jekyll and Hyde, one minute she seemed to have an aggressive voice and the next she was being all motherly again.'<sup>47</sup> Thus, according to the prosecution, Rose exploited her maternity not only to entice or lure girls into the house, but as a controlling instrument during her and Fred's sexual abuse of them:

Counsel 'Rosemary was touching her and reassuring her ...?'<sup>48</sup>

Witness 'She was stroking her cheek and saying it was okay. She seemed so different.'<sup>49</sup>

This portrayal of Rose exploiting her maternity to lure girls into an abusive situation transformed it into a perverse and sexualised version of maternity. It is through the sexual abuse of her children and the other victims that Rose's sexuality became an issue in the trial and thus, the specific subject of testimony.

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<sup>42</sup> Opening speech 6/10/95 p35, also see 10/10/95 p52.

<sup>43</sup> 9/10/95 p22

<sup>44</sup> 16/10/95 p24

<sup>45</sup> 16/10/95 p25

<sup>46</sup> 16/10/95 p28

<sup>47</sup> 16/10/95 p49

<sup>48</sup> 16/10/95 p41

<sup>49</sup> 16/10/95 p49



## Sexuality

Rose's sexuality formed a major theme in the opening speech. Unlike the theme of maternity there was no attempt to introduce it in a gradual manner. The strength of disgust and the condemnation of her sexuality is immediately apparent in the first few pages of the opening speech which talks of 'violent and degrading sexual activity'<sup>50</sup> and 'sexual depravity'.<sup>51</sup> This portrayal of sexuality forms her motive for murder. It is this proposition by the prosecution that provided a basis for the inclusion of the similar fact evidence. Thus, sexuality in the opening speech was a major theme in relation to the girls she is accused of murdering and those who survived (the surviving victims).

Two purposes were served by the theme of sexuality, first, it implicitly allocated Rose an active role in the murders and, secondly, it provided an explicit motive for them. This was spelt out clearly in the prosecution opening speech:

'... Mrs West's sexual interest in girls together with the pleasure and gratification she obviously obtained from sexually assaulting a restrained and immobile girl with the pain, humiliation and indignity which that involves.'<sup>52</sup>

From this point the prosecution went on to outline the sexual motive for the killings:

'... (they were) kept alive for the pleasure of those who wished to abuse her (Lynda Gough's) body.'<sup>53</sup>

'The only reason to keep her (Lucy Partington) alive at all – to further sexual pleasure.'<sup>54</sup>

'... the only proper conclusion was that she (Shirley Hubbard) was kept alive but helpless. That can only have been for sexual gratification.'<sup>55</sup>

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<sup>50</sup> 6/10/95 p3

<sup>51</sup> 6/10/95 p4

<sup>52</sup> 6/10/95 p40/41

<sup>53</sup> 6/10/95 p53

<sup>54</sup> 6/10/95 p60



‘The only purpose could have been to keep her (Juanita Mott) helpless but still living and the only purpose for that could be for sexual gratification. She either died whilst being degraded ... or because she could not be released afterwards.’<sup>56</sup>

On the basis of the sexual motivation for murder a host of evidence relating to Rose’s sexuality was allowed, this was classed by the prosecution as ‘background’ evidence.<sup>57</sup> Consequently, the jury heard from ‘all manner of witnesses who were involved in sexual activity with Mrs West; from lodgers; from neighbours; to others who touched her life in Gloucester’.<sup>58</sup>

The evidence submitted ranges from testimony about the way Rose dressed to first party evidence from her sexual partners. Four witnesses were questioned about the way in which Rose dressed. Each time the response was that she dressed in an overtly sexual manner:

Witness ‘She had a blouse type thing , loose and skirt.’

Counsel ‘Could you see through the blouse?’

Witness ‘Yes’

Counsel ‘Was she wearing anything underneath?’

Witness ‘No’<sup>59</sup>

Witness ‘... (she wore) sometimes hardly anything, sometimes nothing.’<sup>60</sup>

Witness ‘... (she wore) a very short, very, very short miniskirt and low top ... she had nothing on underneath at all. The skirt was so short that it revealed right up to the top of her legs and the top was so low fronted you could see that she had no underclothes on.’<sup>61</sup>

Witness ‘... she came to the door once in a negligee you could see right through ...’<sup>62</sup>

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<sup>55</sup> 6/10/95 p70

<sup>56</sup> 6/10/95 p75

<sup>57</sup> 6/10/95 p104

<sup>58</sup> 9/10/95 p30

<sup>59</sup> Miss A 16/10/95 p36.

<sup>60</sup> Nicola Blythe 17 10 95 p83.

<sup>61</sup> Kathryn Halliday 17/10 95 p108.

<sup>62</sup> Terence Davis 12/10 95 p59.



However, the majority of this background evidence pertained to Rose's aggressive, lesbian, promiscuous and sometimes violent sexuality, none of which are characteristics of appropriate feminine sexuality.<sup>63</sup> Witnesses were called, both male and female, to describe their relationships or encounters with Rose or to impart any knowledge they may have had of her sexual behaviour. This evidence included: testimony by two lodgers that they slept with her;<sup>64</sup> evidence of her working as a prostitute, both from third parties<sup>65</sup> and one of her clients;<sup>66</sup> evidence of group sex, from the parties involved,<sup>67</sup> third party witnesses<sup>68</sup> and those to whom group sex was suggested;<sup>69</sup> evidence of lesbian sex;<sup>70</sup> evidence of her involvement with pornography;<sup>71</sup> and evidence of her involvement with bondage and violence.<sup>72</sup> Some of this evidence may have provided the prosecution with grounds to argue that sex was a motive for the murders (evidence of bondage and sexual violence). However, it was difficult to argue that evidence, for example, that she slept with two of her lodgers could be have been intended to do much more than slur her character and undermine notions of appropriate femininity which embody sexual conservatism. Consequently she was portrayed as sexually uncontrollable, promiscuous, immoral and deviant.

It is fair to say, therefore, that a great proportion of the prosecution case, through the witnesses called under the similar fact rules, was designed to construct Rose as sexually aggressive, even when the sex itself was consensual:

'She just came in, sat beside me, got undressed very, very quickly, almost too quickly. There were no niceties, no formalities ... and I must admit I was very taken aback ... I was then dragged up the stairs ... It was very quick, very forceful.'<sup>73</sup>

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<sup>63</sup> See Ch 2 'Sexuality' and the discussion of Myra's sexuality in Ch 4.

<sup>64</sup> Ben Stanniland 12/10/95 p4 and David Evans 12/10/95 p25.

<sup>65</sup> Judith Batchelor 10/10/95 p56, Gillian Britt 12/10/95 p85.

<sup>66</sup> Arthur Dobbs 17/10/95 p88.

<sup>67</sup> Katheryn Halliday 17/10/95 p109-130.

<sup>68</sup> Charles Jones 12/10/95 p39.

<sup>69</sup> Judith Batchelor 10/10/95 p56.

<sup>70</sup> Katheryn Halliday 17/10/95 p109-130, Miss X 18/10/95 p44-46.

<sup>71</sup> Katheryn Halliday 17/10/95 p109-130, Lynda Tonks 17/10/95 p70, Nicola Blythe 17/10/95 p83.

<sup>72</sup> Katheryn Halliday 17/10/95, Gavin Thomas 23/10/95 p13, Christopher Davis 20/10/95 p10.

<sup>73</sup> Katheryn Halliday 17/10/95 p108-109.



This 'revelation' of her sexuality was a key element in the construction of her as an active party in the murders. Although the pattern of prosecution construction of the defendant as active versus the defence construction of the defendant as passive was also evident in Myra's trial the extent to which they were constructed as active differed. In the Myra's trial, sexuality was used merely to slur her character and undermine her femininity, as is the general trend observed by feminist criminologists. However, in the Rose's trial, the portrayal her sexual aggression sought to make her an equal if not the leading party in the murders and formed the basis for the construction of her guilt. Ultimately, the construction of Rose's active role through sexuality rendered her active and aggressive and responsible for the murders. This undermined her femininity and, thus, also the later defence construction of Rose as passively feminine.

### **Aggressive/Active/Masculine**

The extent of Rose's involvement was defined in the opening speech as 'joint' in a variety of different ways. Phrases used by the prosecution included 'both of them',<sup>74</sup> 'both Rosemary and Fred West',<sup>75</sup> 'this woman and her husband',<sup>76</sup> 'they were in it together',<sup>77</sup> 'again, they were in it together',<sup>78</sup> 'joint activity',<sup>79</sup> 'joint attack',<sup>80</sup> 'she and her husband ... were in it together',<sup>81</sup> 'they did it together',<sup>82</sup> 'complicity',<sup>83</sup> 'joint plan',<sup>84</sup> 'both the Wests'.<sup>85</sup> The focus on Rose's active contribution, which was revealed and developed later through testimony, was, however, evident even in the opening speech's apparent focus on their joint responsibility. The prosecution resisted naming the defendants in what would be considered a traditional/common prioritisation, with the male named first and the female second (ie Fred and Rose). Rose was placed at the

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<sup>74</sup> 6/10/95 p1

<sup>75</sup> 6/10/95 p3

<sup>76</sup> 6/10/95 p4

<sup>77</sup> 6/10/95 p5 and 9/10.95 p17, p21.

<sup>78</sup> 6/10/95 p5

<sup>79</sup> 6/10/95 p40, p103.

<sup>80</sup> 6/10/95 p59

<sup>81</sup> 6/10/95 p77

<sup>82</sup> 6/10/95 p103

<sup>83</sup> 6/10.95 p105

<sup>84</sup> 9.10/95 p21

<sup>85</sup> 9.10.95 p30



fore of joint naming. Thus her contribution became the focus and she appeared as the leader.

This trend toward the focus on Rose's active role was further evidenced in the testimonies. Through the testimonies her aggressive sexuality was used by the prosecution to define her active and sometimes dominant role. Rose's aggressive sexuality was illustrated through her attacks on the 'surviving victims'.<sup>86</sup> The category 'victim' was construed widely in the prosecution case and included those who survived abuse by the Wests. Thus Caroline Owens, Miss A, Kathryn Halliday, Miss X and Anne Marie Davis were all treated as victims for the prosecution's purposes.<sup>87</sup>

Although the majority of the attacks and sexual encounters described were 'joint' (excluding Miss X and Kathryn Halliday) the focus on Rose's contribution varied in the testimonies. As the case progressed the attacks were described as increasingly dominated by her until in the testimony of Miss X they culminated in Rose's sole involvement. Thus, the prosecution case was constructed to build up Rose's involvement. The order in which they called the witnesses was crucial in the construction of a narrative that culminated in Rose's construction as the active, even the dominant party, and sexually perverse. Although Anne Marie's testimony, which is the last of the testimonies of the surviving victims, did not fit this pattern (being a story of joint attacks) she was a strong witness for the prosecution and as such was selected to be the last witness to be called before the more technical and police evidence was submitted. The location of Anne Marie's testimony thus had a disruptive influence on both the pattern of establishing Rose's cumulative involvement and the preferred chronological narrative structure.<sup>88</sup> It seems that this was deemed a justifiable sacrifice as her evidence was especially damning of Rose's sexuality, not solely through her active role, but through the perversion of maternity that the sexual abuse of Anne Marie necessarily involved. Additionally, the memory of her testimony would have thus been foremost in the jury's recollection of the trial.

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<sup>86</sup> Victims in the prosecution case is construed widely and includes those who are not technically victims in terms of the charges in the case, but those who were victims of sexual attacks and even in the case of Kathryn Halliday victims of aggressive but consensual sex. See below.

<sup>87</sup> See 'Victims', below.

<sup>88</sup> D Napley *'The Technique of Persuasion'* London, Sweet and Maxwell (1975), p122 .



## The Testimonies

The first testimony was that of Caroline Owens. The attack on Caroline was clearly a joint attack, as evidenced by the guilty plea entered by Fred and Rose at the time they were charged with the offence. However, Rose's active role was constructed through the continual concentration on her actions over Fred's during the testimony. Initially, this was a straightforward task as the attack began in the car whilst Fred was driving, whereas Rose was in the back of the car and initiated the physical attack:

‘She was just grabbing-trying to grab hold of me ...’<sup>89</sup>

‘She was touching - started touching me.’<sup>90</sup>

Counsel ‘Who was the first person to lay a hand on you?’

Witness ‘Rose.’<sup>91</sup>

As the attack was moved into the house Caroline described the way in which Rose initiated this second phase by kissing and touching her. During this stage of the attack Fred became fully involved. Caroline described them both undressing her and examining her. The prosecution however ensured that Rose's role was never neglected and was brought to the fore of the testimony. Counsel frequently questioned Caroline on what her role at any particular time was:

‘What about Mrs West?’<sup>92</sup>

‘What was Mrs West doing at that stage?’<sup>93</sup>

‘What was Mrs West doing when he struck you?’<sup>94</sup>

‘What was Mrs West doing?’<sup>95</sup>

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<sup>89</sup> 10/10/95 p131

<sup>90</sup> 10/10/95 p131

<sup>91</sup> 11/10/95 p116

<sup>92</sup> 10/10/95 p131

<sup>93</sup> 10/10/95 p133

<sup>94</sup> 10/10/95 p134

<sup>95</sup> 10/10/95 p137



‘Was Rosemary in the room at the time?’<sup>96</sup>

‘Where was Mrs West?’<sup>97</sup>

‘Did Rosemary say anything?’<sup>98</sup>

‘What was Rosemary’s reaction to that, what was she saying?’<sup>99</sup>

‘Was Mrs West present then?’<sup>100</sup>

Finally, the rapes committed by Fred,<sup>101</sup> which may in other circumstances may have been deemed the central act of the attack, were minimised in significance. Again, whilst this is understandable because Fred was not on trial, the rapes were also minimised by Caroline, indicating that she perceived Rose to be the most important actor in the attack. The minimisation was achieved by concentrating on the acts committed solely by Rose (oral sex) or the jointly committed acts (for example the ‘examination’ of her genitals and the beating of them). The unimportance of the rapes in the context of this trial was illustrated by the fact that, although Caroline herself seemed confused about how many times she was raped, this was not clarified by the prosecution, thus revealing the insignificance of Fred’s actions. Indeed, Caroline herself minimised the significance of the rape:

‘... what Mrs West did was something that I had not come across before and it shocked me and upset me, and when Fred raped me it was all over in a couple of seconds.’<sup>102</sup>

Fred’s actions were further mitigated by Caroline as she explained that Fred apologised for the rape:

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<sup>96</sup> 10/10/95 p139

<sup>97</sup> 10/10/95 p143

<sup>98</sup> 10/10/95 p144

<sup>99</sup> 10/10/95 p145

<sup>100</sup> 10/10/95 p150

<sup>101</sup> It is unclear from the testimony, however, it appears that Caroline was raped two or three times by Fred.



‘... he started crying and he said he was sorry.’<sup>103</sup>

The next testimony involving a sexual attack on a victim was that of Miss A. Rose’s active and independent role was more developed in this account. Miss A described the attack on both herself and an attack on another girl which took place immediately before her attack and which she witnessed. Rose’s active role in the abuse of Miss A was immediately evident; not only was it Rose with whom Miss A is associated and visits (see above), but it was Rose who led her into the bedroom where the attack took place and then undressed her. This active role was emphasised by the prosecution whose questions confirmed Miss A’s testimony:

‘You say that Rose led you into this room ...?’<sup>104</sup>

‘You said Rose started undressing you?’<sup>105</sup>

Her description of both the attack on her and the attack on the other girl placed Rose clearly at the centre of the action. It was Rose who produced the tape which restrained the girl, it was her who used the vibrator on the girl and it was her who was making sexual remarks to Fred:

Counsel ‘Who produced the packing tape?’

Witness ‘Rosemary.’<sup>106</sup>

Counsel ‘Who had the vibrator?’

Witness ‘Rosemary.’<sup>107</sup>

Counsel ‘Who was saying this?’

Witness ‘Rosemary to Fred.’<sup>108</sup>

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<sup>102</sup> 11/10/95 p42

<sup>103</sup> 10/10/95 p151

<sup>104</sup> 16/10/95 p39

<sup>105</sup> 16/10/95 p40

<sup>106</sup> 16/10/95 p41

<sup>107</sup> 16/10/95 p45

<sup>108</sup> 16/10/95 p47



In contrast, Fred's peripheral role was emphasised:

Counsel 'What was Fred doing at this time?'

Witness 'He was just stood there at the side of the bed.'<sup>109</sup>

Counsel 'Where was Fred?'

Witness 'He was on the side of the bed.'<sup>110</sup>

Again, as in Caroline Owen's testimony, Fred's acts were minimised and so Rose appeared to be the primary actor. For example, it was him who taped up the other girl, however, there is only one page of testimony which describes this and the focus is not on the actions of Fred but rather upon Rose's presence and the position of the girl and the mechanics of exactly how she was tied. This can be compared to the taping up of Miss A which was done by Rose. This description lasts three pages and is more vivid as Miss A demonstrated how she was tied, furthermore, the demonstration was emphasised by the fact that it was the judge who asked her to do it. This intervention by the judge, who is generally perceived by the jury to be the most powerful and thus most influential member of the court,<sup>111</sup> endorsed the prosecution case. Unlike the description of Fred taping up the other girl, the description of Rose taping up Miss A focused on the actor:

Counsel 'How was Rose doing this? Was she saying anything or how was she behaving when she was wrapping your wrists with the tape? ... 'Was she friendly?''<sup>112</sup>

In contrast, the description of Fred his actions were almost insignificant:

Counsel 'What did he do with the tape?''<sup>113</sup>

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<sup>109</sup> 16/10/95 p40

<sup>110</sup> 16/10/95 p46

<sup>111</sup> See Ch 3.

<sup>112</sup> 16/10/95 p55

<sup>113</sup> 16/10/95 p55



In these contrasting descriptions Rose's name was mentioned four times, twice by Miss A and twice by the prosecution, whereas Fred's name was mentioned only once, by Miss A. This example of the taping up of the victims illustrates how Rose's actions were constructed as central in the attack merely through the technique of questioning adopted by the prosecution.<sup>114</sup> Whilst this is understandable given that Fred was not on trial, it illustrates how the problem of Fred's suicide, and consequent absence, was overcome through the construction of Rose's active role, which was actually facilitated by Fred's absence. In an alternative reading of these events it would be easy to have cast Rose in an accessorial role. In this reading her role would have been to prepare the girls for the main part of the attack, which was the rape by Fred.

As with his role in the taping, however, the significance of the rapes committed by Fred were minimised:

Witness 'He had intercourse with her.'

Counsel 'Was she still on her front? ... Where was Rosemary?'<sup>115</sup>

This short exchange did two things. First, the description of the rape in neutral language (as 'intercourse') changed the meaning of Fred's act, rendering it less harmful. Second, the 'intercourse' was rendered insignificant as counsel immediately directed attention back to Rose. The rape of Miss A was similarly minimised, it featured only at the very end of the description of the attack on her and immediately after she described how Rose inserted a vibrator and a candle into her vagina. During these events which preceded the rape, Fred's peripheral role was clearly established by prosecution questioning:

Counsel 'Could you see Fred at this time?

Witness 'He was to the side of me, on this side and he was masturbating and he seemed to enjoy watching Rose do what she was doing ...'<sup>116</sup>

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<sup>114</sup> O'Barr notes the importance of language in the construction of reality through testimony. For example, the way in which questions are phrased or events recounted can effect the very perception or understanding of how those events unfolded and can even change their meaning. *'Linguistic Evidence: language, power and strategy in the courtroom'* Academic Press, New York (1982), Ch 2.

<sup>115</sup> 16/10/95 p47

<sup>116</sup> 16/10/95 p57



‘Fred was masturbating at the side and – it was movement, movement going on, I could just see it in the corner of my eye.’<sup>117</sup>

Thus, Fred’s actions continued to be portrayed as insignificant even during the rape itself, which is covered in only three and a half lines of the trial transcript.

It is important to note that this presentation of facts to the jury was motivated by the prosecution’s need to prove their ‘theory of the case’. A significant theme in their theory was Rose’s sexual aggression and active role, hence the concentration on her active role in the attacks. However, as noted above, alternative readings of the facts are possible. For example, the rapes by Fred could be viewed as the culmination of the attacks, in which the role of Rose was to ‘prepare’ the victims. This reading, however, renders Rose subordinate to the dominating desires of Fred and so was inappropriate for use by the prosecution. This type of reconstruction of events is illustrative of the way in which truth can be constructed through advocacy.<sup>118</sup> Truth is revealed not to be objective or pre-existing, rather this example shows that events can be interpreted in a way which facilitates the desired result. In this case the desired result was the establishment of Rose’s guilt and the means through which this was achieved was the construction of her active role and aggressive sexuality which rendered her doubly deviant. The similar fact evidence of sexual abuse and aggressive sexuality, was allowed by the judge because the prosecution argued it provided evidence of the possibility that she was involved in similar attacks to those perpetrated on the victims who were killed. This interpretation of the similar fact evidence did not require that Rose was the dominant party in the attacks, merely that she was there and that she participated. It can be argued therefore that the construction of her dominance was intended solely to undermine her femininity and to make the prosecution case strong.

The next witness described a *consensual* sexual relationship with Rose. However, the evidence she gave formed part of the evidence of Rose’s aggressive and sometimes violent sexuality, and particularly her active rather than passive nature. The evidence of Kathryn Halliday was of particular importance in confirming the application of the traditional active (male) and passive (female) roles upon a sexual encounter between

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<sup>117</sup> 16/10/95 p57

<sup>118</sup> See Ch 3



two women. Here Rose was portrayed as dominant and masculine, whilst both Kathryn and Fred were passive and feminised. These constructions were initiated in the testimonies of Caroline Owens and Miss A. During her testimony Kathryn described Rose's aggressive nature.

‘... She became aggressive in the respect that she held me down on the bed very hard, she gripped my wrists ...’<sup>119</sup>

Here, the language that Kathryn Halliday chose to describe her consensual sex with Rose transformed it into something which appeared non-consensual. In addition, her language was passive: throughout her testimony she addressed counsel deferentially.<sup>120</sup> Consequently, her passivity contrasted with the aggression she was describing.

In addition to describing Rose's aggression, her description diminished Fred's role.

Counsel ‘How much of a role did Mr West play in the evening visits?’

Witness ‘Not as much as she did sir. I mean he was there. He was sometimes down with the children and he would occasionally come up and see if anybody wanted a drink.’<sup>121</sup>

‘... we normally had sex but Fred would watch rather than take part.’<sup>122</sup>

This description portrayed a total reversal of traditional roles with Rose as sexually aggressive and active with another woman and Fred as a passive on-looker. He was consequently feminised, even to the extent that he was performing traditionally feminine tasks, whereas Rose was clearly depicted in masculine terms:

‘She was a big woman and very very strong, physically strong, and would hold me.’<sup>123</sup>

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<sup>119</sup> 17/10/95 p113

<sup>120</sup> Throughout her testimony she addressed the prosecution as ‘sir’. This type of powerless language is described by R Laykoff as ‘superpolite’ R Laykoff ‘Language and Woman's Place’ *Language in society* (1973) 2, 45.

<sup>121</sup> 17/10/95 p124

<sup>122</sup> 17/10/95 p121

<sup>123</sup> 17/10/95 p125



In order to transform the prosecution theory that Rose was an active and even dominant partner in sexual abuse into a possible reality, Rose had to be defeminised so that unfeminine behaviour, and ultimately even masculinity, as described above, could be attributed to her. Through the descriptions of her sexual behaviour Rose was cast as aggressive, dominant and violent; she was portrayed as embodying these traditionally 'masculine' characteristics.<sup>124</sup> These constructions were shored up by the descriptions of Rose penetrating the victims with objects, a masculine form of sexuality.<sup>125</sup> Her involvement in the murders, her masculinity and her aggressive behaviour were rendered more credible to the jury by establishing her willingness to reject her maternal role. Her rejection of maternity was evident through the cruelty she exhibited both during the attacks and at other times. For example, she was described as 'grinning and laughing' during the attacks, as impervious to the pleas of the mother of Linda Gough to help her find her daughter, and as 'happy' following the disappearance of Shirley Robinson.<sup>126</sup>

The final two surviving victim testimonies were those of Miss X and Anne Marie Davis. Miss X's testimony concluded the construction of Rose as active and independent (masculine) rather than passive and dependent or subordinate to Fred (feminine). This was achieved solely through the facts of the testimony: the sexual relations between Rose and Miss X took place without the involvement of Fred. This testimony was the culmination of the preceding victim testimonies which gradually established and developed Rose's active role. Although the testimony of Anne Marie did not follow the pattern of that set in the testimony of Miss X (many of the described attacks are joint), the theme of Rose's active role was maintained.

The first incident described by Anne Marie was her first experience of abuse. Like the previous testimonies when joint attacks were recounted the prosecution ensured that Rose's action formed the focus of the testimony:

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<sup>124</sup> RW Connell *'Masculinities'* Cambridge, Polity Press (1995), Ch 1.

<sup>125</sup> C Smart 'Law's Power the Sexed Body and Feminist Discourse' (1994) 17, *Journal of Law and Society*, 194.

<sup>126</sup> Also see above: 'Maternity'.



Counsel 'While all of this was happening did your stepmother do anything other than sit on you?'

Witness 'She was laughing and smirking and joining in ... my stepmother rubbed my breasts and was scratching them until they were bleeding.'<sup>127</sup>

Throughout this section of questioning either no specific person was named in relation to an action or, it was made clear that a particular thing was done by Rose and so the focus was directed away from Fred. The minimisation Fred's contribution was exemplified by the description of the rape of Anne Marie during this first incident of abuse. As in the previous testimonies the rape itself received minimal attention and the focus was on Rose's role in the rape and the events surrounding it:

Counsel 'My stepmother watched my father have sexual intercourse with me ... they were whispering a lot.'

Witness 'How was your stepmother reacting to all this?'<sup>128</sup>

This was the only reference made to the rape by Fred, again it was couched in neutral terms (sexual intercourse<sup>129</sup>) and the prosecution immediately diverted attention back to Rose's actions.

The remaining testimony described one more major incident of sexual abuse, an incident which was instigated and dominated by Rose. Anne Marie recounted an occasion when she was led down to the basement by Rose, beaten and abused by her. Again, although Fred was present, his presence did not form an important part of the testimony:

'And then I remember my father being there ... My father had sexual intercourse with me and then he went ...'<sup>130</sup>

Fred's presence was rendered both transient and insignificant in comparison with her lengthy description of Rose's actions:

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<sup>127</sup> 17/10/95 p97

<sup>128</sup> 18/10/95 p97

<sup>129</sup> Anne Marie describes being raped by her father as sexual intercourse throughout her testimony.



Witness 'Rose was getting somewhat annoyed and agitated with me. Then I was strapped to the instrument, I was tied to it.'

Counsel 'Who was there then?'

Witness 'My stepmother, Rosemary ...'<sup>131</sup>

'She started hitting me ... with her fists and hands - and swearing at me.'<sup>132</sup>

Fred's actions were further minimised by Anne Marie as despite his actions Fred appeared to her as a symbol of safety in contrast to the threat posed by Rose:

'I felt frightened because my Dad was not there.'<sup>133</sup>

So, like Caroline Owens, Anne Marie's evidence mitigated Fred's actions, whilst concentrating on the acts of Rose. Once again, the mode of questioning shaped the perception of the events described. Fred raped Anne Marie in each of the episodes she described. The minimisation of his actions and the focus on Rose's shaped the events so that she appeared to be the instigator or main actor and the alternative version which would have placed her in a preparatory role was silenced.

The testimony of Anne Marie completed the construction of Rose's masculine sexuality. Like the portrayal of her active role, the testimonies depicted a progression of her sexuality from aggressive, yet consisting of essentially feminine acts (eg fellatio) in the attack on Caroline Owens, to (masculine) penetration with objects in the testimonies of Miss A, Miss X and Kathryn Halliday. This construction culminated in the description of Rose raping Anne Marie 'like a man':

'Rose lifted her skirt up and she had a belt on and a vibrator in the top ... The vib - she used the vibrator. She hurt me like previous, she was pushing it deep inside.'<sup>134</sup>

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<sup>130</sup> 18/10/95 p101

<sup>131</sup> 18/10/95 p101

<sup>132</sup> 18/10/95 p101

<sup>133</sup> 18/10/95 p100

<sup>134</sup> 18/10/95 p101



Unlike the accounts of Fred's rapes, which were described as 'sexual intercourse', this was a vivid and detailed description which focused upon the pain it caused.

The testimony of these victims established the masculine character of Rose in order that the jury might then infer her involvement in the killings and the abuse of the murder victims. It was necessary to establish this inference in the minds of the jury in order to rebut the presumption that women do not commit sexual offences, and, in particular, that they do not commit sexually motivated murder.<sup>135</sup> The absence of evidence directly connecting her with these victims meant that establishing the belief that Rose could have committed the murders in the minds of the jury was an essential part of the prosecution case. Although there was a little evidence connecting her indirectly with the murders this was generally weak evidence. For example, Rose lied, claiming she had called the police about Heather's disappearance<sup>136</sup> and explaining she had run away after a row.<sup>137</sup> Also, she had been seen once picking Linda Gough up from her home,<sup>138</sup> and she had been seen bundling Shirley Robinson's clothes into bin bags after her disappearance.<sup>139</sup> However, such evidence was circumstantial. The prosecution were faced with an evidential gap which they sought to bridge by asking the jury to cross it with deductive reasoning.<sup>140</sup> The testimonies examined above went some way toward associating her with the killings and establishing her active role in spite of the weakness of this evidence. Ultimately, however, the prosecution case rested on replacing one assumption with another. Their case rested upon the *assumption* that:

Counsel 'What was done ... can only have been done with the knowledge and active participation of this woman Rose West.'<sup>141</sup>

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<sup>135</sup> Generally on the association of masculinity and sexually motivated murder see D Cameron and Fraser 'The Lust to Kill: a feminist investigation into sexual murder' Cambridge, Polity in association with Basil Blackwell (1987).

<sup>136</sup> 17/10/95 p25

<sup>137</sup> 17/10/95 p78

<sup>138</sup> 10/10/95 p148

<sup>139</sup> 13/10/95 p54

<sup>140</sup> See Ch 3

<sup>141</sup> 6/10/95 p70



## Opposing Constructions By The Defence

In response to the prosecution construction of Rose's character, one of the major strands of the defence case was to offer an alternative construction. For them, therefore, the key to the defence was the redefinition<sup>142</sup> and reconstruction of Rose's character, which was designed to destroy the grounds on which the prosecution asked the jury to make a jump from uncertainty to certainty of her guilt. The parameters of her character, through the theme of her femininity, were set by the prosecution. The defence case then addressed and redefined those same themes in order to establish her femininity. Their attempt to refeminise Rose was evident both through the cross-examinations of the prosecution witnesses and the defence testimonies, particularly the testimony of Rose herself.

### Maternity

#### **The Cross-examinations**

The 'reconstruction' of Rose within the traditional discourse of maternity commenced in the cross-examinations. Daisy Letts, the first witness called by the prosecution was sympathetic to the defence and, therefore, their questioning of her anticipated the prosecution's attack on Rose's maternity, which had been hinted at during their opening speech. The cross-examination was directed, at this early point in the trial, to establishing Rose's 'maternal-streak'. Questions put to Daisy established that Rose had always been devoted to children:

Counsel '... devoted to her younger brothers?'

Witness 'Yes'

Counsel 'She was always playing with them?'

Witness 'Yes'

Counsel 'And looking after them?'<sup>143</sup>

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<sup>142</sup> Redefinition is identified by Bennett and Feldman as a defence tactic by which an ambiguous element of the prosecution's story is ambiguous and therefore redefined in such a way to facilitate the restructuring of that story: *'Reconstructing Reality in the Courtroom'* London, Tavistock Publications (1981), Ch 5.

<sup>143</sup> 9/10/95 p64



‘Do you remember her during that time baby-sitting for the children next door?’<sup>144</sup>

‘She adored children? She loved smaller children.’<sup>145</sup>

Specifically, the cross-examination addressed the way Rose behaved with her own children:

Counsel ‘So as far as you were concerned they were very well looked after?’

Witness ‘Whenever I saw the children with Rose, yes they did look - she always kept their hair nice and they looked a lot better than when I first saw them (when they were in care).’<sup>146</sup>

‘You used to comment ... ’you look after the children very well Rose’ something to that effect?’<sup>147</sup>

This theme continued in the cross-examination of Rose’s sister:

‘She was devoted to the two young boys, as they were then?’<sup>148</sup>

These testimonies provided the main examples of the construction of Rose as a good mother by the defence during the prosecution case, although there were other allusions to this theme during their cross-examinations:

‘So far as you could see she looked after the children well?’<sup>149</sup>

It was also argued that Rose reacted as any mother would when hearing of the death of Heather from the police and their questioning of her over that death:

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<sup>144</sup> 9/10/95 p66

<sup>145</sup> 9/10/95 p70

<sup>146</sup> 9/10/95 p77

<sup>147</sup> 9/10/95 p77

<sup>148</sup> 9/10/95 p92

<sup>149</sup> 10/10/95 p24



Counsel ‘... between the time of her arrest ... and the time of her release ...whereas she consumed liquids she did not eat any food that was offered to her?’<sup>150</sup>

Maternity was employed by the defence in two further ways. First, it was used to portray Rose’s actions, as described in the prosecution case, as normal.<sup>151</sup> Her behaviour towards her children was reconstructed within the actions of a ‘normal mother’. So, for example, her harsh treatment and strong discipline were explained by ‘normal’ factors and her response was thus also rendered normal:

Counsel ‘She was very young?’

Witness ‘Yes’

Counsel ‘She had custody of two step children?’

Witness ‘Yes’

Counsel ‘She had a baby of her own?’<sup>152</sup>

‘And I suggest to you that she never assaulted you or struck you except on occasions up until you were fourteen when she was disciplining you?’<sup>153</sup>

The second use of maternity was only briefly introduced by the cross-examination, it was used to explain how Rose remained ignorant of the Fred’s actions and the abuse and murder of the victims in her house. Rose’s role as the mother of eight children, according to the defence, consumed her so entirely that she did not notice Fred’s behaviour:

‘... so really as I say throughout the period when you resided with Mr and Mrs West she was either having a baby or was carrying a baby ... And she had her hands full with these, during your time, three very young children?’<sup>154</sup>

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<sup>150</sup> 25/10/95 p93

<sup>151</sup> That is those actions which whose truth is not wholly rejected by the defence.

<sup>152</sup> 9/10/95 p127

<sup>153</sup> Cross-examination of Anne Marie 20/10/95 p51.

<sup>154</sup> 13/10/95 p30



## Maternity in Rose's Examination in Chief

There was very little reference to maternity in the defence's opening speech. Indeed, there was very little reference to any of the themes of femininity. The opening speech only drew the attention of the jury to Rose's 'sobs and distress' when she was told by the police that one of the bodies discovered was that of Heather. This was used to indicate that she was normal, caring mother, who had no idea her daughter had been killed. Despite this failure to introduce the theme of maternity in the opening speech, it did play a major role in the most important testimony of the defence case; the testimony of Rose herself.

Key in the portrayal of Rose's maternity was the assumption of the importance of maternity and family in her life. This importance or centrality was emphasised in her testimony through the defence's structure of questioning. Events that were discussed during the testimony were located in time with reference to the births of her children. Thus, the fact that she was a mother was emphasised. This approach confirmed the centrality of the children in her life which was portrayed through her description of events from the time she met Fred until the time of the trial:

'Again, if we can use as a framework, perhaps for your assistance, the births of the various children ...'<sup>155</sup>

Unlike the prosecution case, the defence enabled Rose to contextualise herself within a familial and domestic setting. For instance, the questioning initially established Rose in the context of her own family as a child. Like the cross-examination of Daisy Letts, it discussed her relationship with her younger brothers and other young children and her maternal feeling for them:

Counsel 'How did you get on with your younger brothers?'

Rose 'Very well, we were very close.'

Counsel 'What about other children, younger children, did you like other children or not?'

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<sup>155</sup> 31/10/95 p1



Rose 'Yes, I loved other children I played a lot with other children. I spent most of my life with them, baby-sitting and playing with other children.'<sup>156</sup>

This pattern of contextualisation was also evident in Myra's trial.

From this point the testimony went on to examine Rose's specific performance of her maternal role. The themes identified in the defence's cross-examinations of prosecution witnesses were continued and supplemented during the testimony. Of all these themes, however, the most significant was that Rose, contrary to the prosecution case, was in fact a good mother and not only to her own children:

Counsel 'Can you remember how - when you started that work with reference to the birth of Stephen ...?

Rose '... He would have been at least 15, 16 months before I would have left him. I wouldn't have left him too young.'<sup>157</sup>

This maternal capacity was also stressed in relation to her stepchildren:

'I loved them straight away sir, I felt sorry for them because they never had their mother around to look after them. I wanted to look after them.'<sup>158</sup>

'I wanted to look after them I wanted to protect them as much as I could. I loved them in fact.'<sup>159</sup>

'To me she (Anne Marie) was a little girl who needed looking after. That's what I wanted to do: I wanted to look after her. I wanted to keep her away from going into care and children's homes.'<sup>160</sup>

In fact her children were depicted as her main source of happiness:

Counsel 'Louise, was that also a source of pleasure to the two of you?'

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<sup>156</sup> 30/10/95 p31

<sup>157</sup> 30/10/95 p88

<sup>158</sup> 30/10/95 p43

<sup>159</sup> 30/10/95 p49



Rose 'Yes, yes.'

Counsel 'Barry?'

Rose 'Ehm I think I was more pleased about Barry than Fred was.'

Counsel 'Why was that?'

Rose '... You know how Mums are about their boys.'<sup>161</sup>

This construction of Rose as a good mother was supplemented and supported with the additional themes of sacrifice and martyrdom that being a good mother is meant to involve. The self-sacrifice that Rose undergoes for the good of the children began when her father discovered her relationship with Fred and her pregnancy by him.

'He (Rose' father) said 'you can either stay at home, do as you are told, go to work, earn money, bring it back home, have the abortion, not have any boyfriends etc etc,' or I could go off with this Fred West and never see my family again, and he said if he see either of us in the street he would knife us.'<sup>162</sup>

'... my main thought was of Anna and Charmaine, that they needed looking after. They were in a home and I didn't want them to be in a home. I wanted them to have parents and a settled home life and I also wanted my baby.'<sup>163</sup>

'I love Anne Marie, she was that little child I left home for.'<sup>164</sup>

The testimony went on to reveal the difficulties Rose had in performing her role as a good mother and explained that in spite of them all she did her very best for her children. Thus, she appeared not only as a good mother but as a martyr to that calling.

Counsel 'Were you able to manage with her (Heather) as a baby ... or did you find her an ordeal, or what?'

Rose 'I loved her very, very, very much, but I did find her a bit awkward when she was a baby. She was my first baby and I was inexperienced as

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<sup>160</sup> 31/10/95 p39

<sup>161</sup> 30/10/95 p92-93

<sup>162</sup> 30/10/95 p48

<sup>163</sup> 30/10/95 p48

<sup>164</sup> 31/10/95 p43



a mother, and she would sleep all day and be awake all night which would make me very tired.’<sup>165</sup>

Counsel ‘You were now the mother of three young children of your own ... and Anne Marie ... Were you able to manage them without effort, or did you find it was an effort?’

Rose ‘No it was an effort ... it was very difficult ... I found I was getting very tired ... I was just so tired I was exhausted all the time ... I actually had to go to the Doctors in the end’<sup>166</sup>

Fred compounded these difficulties:

Counsel ‘Was Fred supportive?’

Rose ‘Sometimes, but he could also be very difficult.’<sup>167</sup>

In spite of her demanding role as a mother in the face of what was later revealed to be a very unhelpful, even disruptive husband, Rose started work as a cleaner because:

‘I wanted the money for my children.’<sup>168</sup>

Thus her role was evidently made more difficult by Fred’s inability to provide and his failure to support her:

‘Whenever he (Fred) was in the house he was always upstairs with the lodgers, he was never down with his family.’<sup>169</sup>

‘I would go to bed being so exhausted and Fred wouldn’t be in.’<sup>170</sup>

However, in addition to her difficult relationship with her husband Rose had to contend with the difficult lodgers he introduced to the house.

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<sup>165</sup> 31/10/95 p61

<sup>166</sup> 30/10/95 p84-85

<sup>167</sup> 30/10/95 p85

<sup>168</sup> 30/10/95 p86

<sup>169</sup> 30/10/95 p80

<sup>170</sup> 30/10/95 p95



‘... they were tearing my house apart ... Like I say I had my own children, I didn’t want drugs mixed up in my children ...’<sup>171</sup>

Even when things became so bad between her and Fred that she wanted to leave Rose insisted:

‘Because I was having problems like that with Fred and Anna Marie I didn’t just abandon her.’<sup>172</sup>

Thus, both Rose and the defence team employed traditional discourses of maternity<sup>173</sup> in her construction as a good and devoted mother. The only purpose of this evidence was to rebut the prosecution construction of her bad or deviant femininity and her dearth of maternity, which enabled her, according to their theory, to kill her own child and step-child. In addition, from this basis they could go on to explain behaviour identified in the prosecution case as deviant in terms of maternity and try to reconstruct it in a way which accorded with maternity and femininity. Both her harsh behaviour towards the children and, to some extent, her sexuality were made as normal as possible through the testimony. Thus, maternity was used by the defence to construct Rose’s ‘good character’ and to explain behaviour that would be discordant with good female/feminine behaviour. In Rose’s defence maternity was used to explain her physical abuse of the children and her sexuality.

The physical abuse of the children exposed by the prosecution was explained by the defence through discipline:

Rose ‘I thought I was able to look after the until Charmaine started resisting my care.’

Counsel ‘How did she start to resist your care?’

Rose ‘Just generally misbehaving, not eating, running away ...’<sup>174</sup>

Counsel ‘... did you ever have occasion to discipline or to punish any of the children?’

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<sup>171</sup> 30/10/95 p87

<sup>172</sup> 31/10/95 p45

<sup>173</sup> See Ch 2.



Rose 'I would have to discipline the children, I had nobody else to discipline or to punish the children, it was my job.'

Counsel 'Fred was in prison?'

Rose 'That's right, sir, yes.'<sup>175</sup>

Rose 'I believed I wasn't physically violent with Anne Marie, I used to shout and I used to lose my temper ...'

Counsel '... did you ever beat her?'

Rose 'I never beat her, no sir, I used to smack her. I tried to discipline her.'<sup>176</sup>

This theme was first introduced in the defence's cross-examination of Anne Marie (above).

In addition, maternity was used to attempt to explain and excuse Rose's sexuality.

'(he said) that I was a very young girl and I couldn't just dedicate myself to looking after children and doing the housework.'<sup>177</sup>

It was also used in this way to neutralise items or places in the trial that are symbolic of her sexuality. For example, her 'special room' which featured frequently in the trial as her 'reception' room for clients, was desexualised through the discourse of maternity:

'Fred made it one of those things that we have a special room where I kept my special things, like the things the children bought me etc ...'<sup>178</sup>

Rose's maternity was, however, not only used as a general theme in order to construct a background of appropriate femininity against which her involvement in murder and abuse was rendered incongruous and, thus, doubtful. It was also explicitly used as part of the defence to the specific charges. It explained both her continued involvement with Fred and her seemingly cruel and inappropriate reaction to Heather's disappearance.

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<sup>174</sup> 30/10/95 p49-50

<sup>175</sup> 30/10/95 p52

<sup>176</sup> 31/10/95 p41

<sup>177</sup> 30/10/95 p60

<sup>178</sup> 31/10/95 p11



The first of these defence tactics was to distance Rose from Fred in order to oppose the prosecution theory that the attacks and murders were jointly committed and to explain how he could have committed the crimes without her knowledge and participation. In order to achieve this distancing Rose described him from their first meeting as insignificant to her in comparison to the children:

‘He was just a boyfriend, somebody I knew. It was the children that really interested me.’<sup>179</sup>

Even after their marriage became problematic and she gained an insight into his true nature following the attack on Caroline Owens, she described how she stayed with him only for the sake of the children;

‘I wanted to keep my baby, and I just felt alone ... I didn’t know where the money was going to come from, and another consideration was Anne Marie, she was a little girl at the time. I knew she loved her father very very much ... she would never forgive me for taking her away from her father; then I thought that if I leave her with her father that means I have deserted her. I didn’t - I couldn’t do that to her.’<sup>180</sup>

Some of the most damaging evidence against Rose, however, was the accounts of her reaction to Heather’s disappearance. This not only undermined her femininity, but it was also used to imply that she was involved in the disappearance itself. Maternity was used to counter the prosecution’s focus on this evidence, to illustrate that she was reluctant to allow Heather to leave and to explain why, despite this, she allowed her to leave. Rose explained that she did not want Heather to go.

‘I wanted to persuade her to stay.’<sup>181</sup>

‘I wanted to have another talk with her, you know a last ditch attempt to try and persuade her to stay.’<sup>182</sup>

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<sup>179</sup> 30/10/95 p43

<sup>180</sup> 30/10/95 p102

<sup>181</sup> 31/10/95 p26



However, at the same time she was concerned that the other children would be badly effected by Heather's lesbianism and man-hating:

'I believe that she was a true lesbian ... and I believe that if she had stayed at home, it would have been a bad influence on the other children anyway.'<sup>183</sup>

After Heather's disappearance Rose used maternity to explain her behaviour, cruel reaction and attitude toward her,

'I was just so very angry.'<sup>184</sup>

'I didn't think that I was that bad a Mum for her to do that to me.'<sup>185</sup>

Thus, it is evident that maternity as a discourse or theme served two functions in the defence case. It was a major theme in the construction of Rose's character. This construction of her as maternal was designed to make her participation in the murders doubtful. The jury was asked to employ deductive reasoning. Based on the unspoken assumption or generalisation that maternal women do not kill they were asked to deduce that such a caring and ultimately motherly woman could not have possibly killed these young girls, let alone her own daughter. In fact, no 'normal' woman could have possibly committed these crimes and so it was important that the jury perceived Rose as a normal woman.

### **Maternity in Rose's Cross-examination**

The 'reconstruction' of the prosecution's portrayal of Rose's maternity by the defence was countered in her cross-examination when the prosecution reasserted their initial construction. The cross-examination embodied two discourses. First, the construction of Rose as a bad and sexually perverse mother; second, when Rose employed a defensive construction of normal maternity the prosecution immediately responded by attacking Rose's portrayal of her maternity. As a consequence, the format of the

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<sup>182</sup> 31/10/95 p28

<sup>183</sup> 31/10/95 p36

<sup>184</sup> 31/10/95 p34

<sup>185</sup> 31/10/95 p33



testimony becomes ‘bad mother’ / ‘good mother’. The prosecution constructed Rose as a bad mother and the defence reconstructed her as a good mother.

The prosecution’s cross-examination of Rose began with an attack on the defence’s attempt to render Rose’s violent and abusive motherhood normal by seeking to re-categorise it as discipline. Her disciplining of Charmaine was once again constructed as cruelty:

‘She would not submit to your discipline?’<sup>186</sup>

‘But she did not cry, she did not want to give you the satisfaction?’<sup>187</sup>

‘Did you tie her to the bed?’<sup>188</sup>

‘You sometimes hit Anne Marie with a wooden spoon. Did you hit Charmaine with a wooden spoon?’<sup>189</sup>

‘Mrs West, how rough is rough?’<sup>190</sup>

‘You abused that girl did you not?’<sup>191</sup>

The progression of this construction culminated in the accusation that it was Rose’s cruel version of maternity which led to the death of Charmaine:

‘... tied her arms ... tied her to the bed ... pushed her around ... and you killed her?’<sup>192</sup>

A similar attack was made on her prior attempts to present her role in relation to Anne Marie as normal. However, the prosecution did not draw on cruelty in this instance, but

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<sup>186</sup> 31/10/96 p106

<sup>187</sup> 31/10/96 p107

<sup>188</sup> 31/10/96 p107

<sup>189</sup> 31/10/96 p108

<sup>190</sup> 31/10/96 p112

<sup>191</sup> 31/10 96 p126

<sup>192</sup> 31/10 96 p126



upon a notion of perverse, corruptive and sexualised motherhood. Once again Rose responded by attempting to reconstruct each episode as ‘normal’.

Counsel ‘You were very concerned about her sexual development ... You were concerned to improve her sex life ... ?’

Rose ‘I cared about Anne Marie ... she had a problem with her tubes, it was me who took her to the Doctors.’<sup>193</sup>

Counsel ‘So, you recorded your interest in your stepdaughter’s sex life or sexual development?’

Rose ‘No sir, that’s her health, not her sex life.’<sup>194</sup>

Counsel ‘You were buying Anne Marie alcohol, taking her out at night and going to pubs and clubs at twelve and thirteen ...?’

Rose ‘Well she went anyway, sir ... I was just taking an interest in her. I thought she would be safe and well with me ...’<sup>195</sup>

Counsel ‘Did you in fact find fellas for Anna Marie?’

Rose ‘Anna Marie was quite capable of finding her own fellas, sir.’<sup>196</sup>

Rose’s reliance on her caring maternity as a defence was then attacked by the prosecution. They made it clear during the questioning that this would not have been the first time that she had exploited her femaleness, particularly her maternity, for her own means and protection. They cited her conviction for the attack on Caroline Owens, suggesting that it was her status as mother which had protected her from imprisonment.<sup>197</sup>

It is in the cross-examination that the prosecution reintroduced an element of maternity which had not been addressed in Rose’s testimony. Thus her use or exploitation of her femaleness and maternity to lure girls to the house was reasserted:

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<sup>193</sup> 1/10/95 p4-5

<sup>194</sup> 1/10/95 p46

<sup>195</sup> 1/10/95 p44

<sup>196</sup> 1/10/95 p47

<sup>197</sup> 1/10/95 p23



‘Girls, the lost, the bemused, girls in care, girls in trouble found their way to Cromwell St ... You were a shoulder to cry on were you not?’<sup>198</sup>

This wider concept of maternity was then used to once again construct a twisted and perverse maternity, which ultimately led to the death of Shirley Robinson. Here the use of maternity was explicit. It was used, not only to impugn Rose’s character and construct her bad femininity, but also to provide a means and a motive for murder. The prosecution used Rose’s concept of her own maternity as the link between Shirley Anne Robinson and the Wests:

‘What you said was you saw her as a vulnerable child and you wanted to protect her?’<sup>199</sup>

From here the prosecution developed an alternative construction of Rose’s story / defence. Their version of Rose’s role in the death of Shirley was that she was lured by Rose, became pregnant by Fred and, therefore, became a threat to Rose who killed her:

‘Your life could come tumbling down, could it not, if Fred had gone off with Shirley?’<sup>200</sup>

As before Rose’s defence was dependent on her maternity and her position as a married family woman.

‘She had no hold over Fred or any of my family. I was the one married to Fred. I had the family.’<sup>201</sup>

However, the use of maternity in her defence stretches wider than that. It covered the reason why she failed to help the police in relation to the investigation:

‘I had just been told about the death of my daughter and I was very confused and I was shocked and I was a real mess, I just couldn’t think straight. All I could see were images of my daughter coming in front of my face.’<sup>202</sup>

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<sup>198</sup> 1/10/95 p49

<sup>199</sup> 1/11/95 p55

<sup>200</sup> 1/10/95 p74



More generally, it was used to rebut the possibility that she, a woman, could ever carry out such a murder:

‘The girl was pregnant, sir, I wouldn’t have killed a baby.’<sup>203</sup>

From here the cross-examination went on to deal with the death of Heather. As Rose’s own daughter, Heather was a symbol of the extent to which Rose’s had failed as a (feminine) woman. This failure to spare even her own children from her cruelty was introduced generally as the prosecution noted her general attitude toward the care of her children.

‘By this time, 1979, the children were sleeping in the basement, were they not, in the cellar?’<sup>204</sup>

‘Children sleeping in the cellar?’<sup>205</sup>

The two ways in which Rose failed as a mother to Heather constituted the remains of her cross-examination. The first of these was the physical cruelty inflicted on Heather:

‘Did you ever give Heather a good hiding?’<sup>206</sup>

However, this was less significant than the failure of Rose to react as a normal mother following Heather’s disappearance, an important sub-theme of the prosecution case:

‘Why didn’t you go instantly to the neighbour Fred said saw Heather leave?’<sup>207</sup>

‘Mrs West, your daughter had vanished into thin air.’<sup>208</sup>

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<sup>201</sup> 1/10/95 p73

<sup>202</sup> 1/10/95 p65

<sup>203</sup> 1/10/95 p75

<sup>204</sup> 1/10/95 p76

<sup>205</sup> 1/10/95 p78

<sup>206</sup> 1/10/95 p89, this is repeated five times in pages 89-90.

<sup>207</sup> 1/10/95 p98

<sup>208</sup> 1/10/95 p98



This theme was strengthened as the prosecution compared Rose's reaction to that of an ordinary mother:

'As a mother you would have gone to the neighbour immediately.'<sup>209</sup>

'You would have grabbed hold of her (Heather's friend) and said "let me buy you a cup of coffee, come on, sit down, tell me all about it, I am worried sick".'<sup>210</sup>

Once again it was maternity that Rose used to defend herself from the prosecution's denouncement of her as a mother who had failed in her maternal duty. This took the same two forms as in relation to Shirley; it was a defence as to why she failed to call or assist the police and a general defence that, as a woman, she could never have killed a child. After Heather disappeared Rose claimed she did not call the police because:

'I wouldn't have wanted the police turning up on her doorstep, I was protecting her'<sup>211</sup>

During the questioning she claimed she was unhelpful because:

'My mind was elsewhere at the time. I had to get back home and see what had happened to my children.'<sup>212</sup>

Ultimately however, she evoked the most basic defence:

'I wasn't mixed up in murder, especially of my own children.'<sup>213</sup>

It is clear then that there were a number of established defence and prosecution themes relating to maternity which recurred throughout Rose's testimony. The defence drew on the assumed connection between femaleness and maternity to argue that a woman could not have committed the murders which Rose was accused of. This connection also provided them with a means of explaining behaviour alleged by the prosecution within

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<sup>209</sup> 1/10/95 p99

<sup>210</sup> 1/10/95 p102

<sup>211</sup> 1/10/95 p97

<sup>212</sup> 1/10/95 p101

<sup>213</sup> 1/10/95 p94



the realms of normal female behaviour. For example, reconstructing abuse in terms of discipline. For the prosecution Rose's dearth of maternity both made her involvement in the crimes possible and provided a motive. The frequent recurrence of these themes illustrates the central role of the general theme of maternity in both the testimony itself and the trial as a whole.

### Sexuality

Unlike maternity, sexuality received some attention in the defence's opening speech. Their references to sexuality pre-empted the constructions that were suggested by the prosecution.<sup>214</sup> The references made in the defence's opening speech were designed to shift the focus of the trial away from Rose's sexuality and to persuade the jury that the inclusion of such evidence merely served to obscure the true purpose of the trial:

'The fact that Rose West may have been a lesbian does not make her a murderer. The fact that she had sex with some of the lodgers does not make her a murderer. The fact that she was forced into prostitution does not make her a murderer. The fact that she had sex aids in the house does not make her a murderer ... [the evidence is only meant to] excite prejudice and passion against this defendant.'<sup>215</sup>

However, having said that the defence attempted to shift the focus away from Rose's sexuality in the opening speech, the same was not true of her testimony. Rose's defence, which was based in part on constructing a feminine women, necessarily involved 'reconstructing' the aggressive and violent sexuality evidenced in the prosecution's case as a more feminine sexuality. This alternative construction involved two stages. The first was to construct a general base of conservative sexuality. The second then went on to normalise some of the evidence brought by the prosecution regarding her sexuality.

At the very beginning of her testimony Rose's sexual conservatism was established. She demonstrated this sexual conservatism through a use of language that conveyed innocence:

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<sup>214</sup> It is one of the characteristics of a good opening speech to anticipate the opposition and summarise your own response to their anticipated theories, constructions etc D Napley *'The Technique of Persuasion'* London, Sweet and Maxwell (1975), p115.

<sup>215</sup> 31/10/95 p17, other examples on pages 16, 14, and 17.



‘I resisted his advances’<sup>216</sup>

And when asked about her reaction to being asked out by Fred she replied

‘Shock horror at first.’<sup>217</sup>

The apparently conservative family she came from was used to support this portrayal. Rose described their ‘shock horror’ at her relationship with Fred and the extreme measures they took to stop it.<sup>218</sup> However, such an approach was problematic as, at this time, Rose was not sexually inexperienced. This obstacle to the construction of her sexual conservatism and innocence was dealt with through the simultaneous construction of her as a sexual victim. This theme was then carried through the testimony explaining some of her later sexual behaviour.

Rose’s sexual victimisation began when, at fourteen, she was deserted by her family and forced to live with her sister. During this time she had sex with her sister’s 30 year old friend. She then described how the police tried to intervene and take her back to her parents several times. Although it was not explicitly said, there was an implication in this evidence that Rose was exploited. This exploitation and victimisation were compounded when she explained that she was raped on two separate occasions during her teens.<sup>219</sup> This discourse of victimisation was used later to explain Rose’s susceptibility to Fred’s ‘persuasion’ and thus her promiscuity and lesbianism. The testimony described how Fred made Rose go out at night to clubs and bars.

‘... to pick up other men really. That was what Fred intended me to do. He made it clear that this is what I was out there to do.’<sup>220</sup>

It also explained how she was first persuaded by Fred to embark on lesbian relationships.

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<sup>216</sup> 30/10/95 p38

<sup>217</sup> 30/10/95 p40

<sup>218</sup> For example placing her in care.

<sup>219</sup> This will be explored further below.



‘I remember Fred saying to me about getting involved with Caroline Owens as a lesbian relationship, which would have been my first experience with a woman. I am afraid with his very persuasive manner, he did persuade me that Caroline Owens was willing to try it out ...’<sup>221</sup>

In spite of the unexpected consequences of her encounter with Caroline Owens, Rose later found refuge from her difficult life and relationships with men with other women:

Counsel ‘Did you find anything in these relationships which were lacking in your relationships with men?’

Rose ‘... my sexual relationships with other women were very special to me ... They were entirely different than when I went with a man. They were warmer, closer ...’<sup>222</sup>

One benefit of this construction of Rose as a sexual victim was that, although the traditional construction of women as sexually conservative would ordinarily problematise the open discussion of sexuality, the fact that the cause of Rose’s sexual behaviour was a consequence of her domination by men, meant that she could be honest and acknowledge her less than perfect sexuality without shame:

Counsel ‘In your own room then, I mean, did you have sex with these men?’

Rose ‘More often than not sir, yes.’<sup>223</sup>

Counsel ‘Did you keep any sex aids in the house?’

Rose ‘Yes sir, unfortunately I did.’<sup>224</sup>

Her tone here is passive and apologetic, underlining the substance of what she was seeking to portray.

The descriptions of her sexual victimisation here prefigured the approach used subsequently to reconstruct her seemingly inappropriate behaviour within normal terms.

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<sup>220</sup> 30/10/95 p89

<sup>221</sup> 30/10/95 p98

<sup>222</sup> 30/10/95 p91

<sup>223</sup> 31/10/95 p20

<sup>224</sup> 31/10/95 p48



Within the confines of her atypical female sexual role (promiscuous and lesbian) Rose's testimony attempted to render her sexuality both feminine and normal. It was rendered more normal by reconstructing the lesbian sex as a relationship rather than an expression of raw sexuality and by describing it in a non-violent, non-aggressive manner. It was femininised by describing it in terms of loving / caring consensual relationships in which Rose's role was passive rather than aggressive. Thus, Rose was portrayed in feminine terms and her masculine portrayal in the prosecution case was contradicted.

All of her relationships were portrayed as being as close to normal as was possible. As to those with men, she stated:

'I would like to make friends with people. We were friends. We would talk and we would have a drink and maybe play records ...'<sup>225</sup>

And in relation to those with women:

'... She (Kathryn Halliday) – she seemed as though she wanted companionship and that is what she got with me.'<sup>226</sup>

'I didn't like being on my own in the day; that was part of the reason why I wanted a friendship ...'<sup>227</sup>

Similarly, her marital relationship, although sexually atypical, was constructed within 'normal' parameters. Those parameters being the private nature of marriage:

Counsel 'You said he photographed you. Did he video you? ... For whose perusal were they meant?'

Rose 'For Fred. They were mine and Fred's only, not for anybody else. I never showed them to anybody else. They were totally private.'<sup>228</sup>

Thus, through this process Rose's testimony sought to transform what were described in

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<sup>225</sup> 31/10/95 p20

<sup>226</sup> 31/10/95 p47

<sup>227</sup> 31/10 95 p51



the prosecution case as ‘attacks’ or promiscuous, ‘prostitutionary’ encounters into ‘relationships’ based on caring and friendship. This rendered her sexuality ‘feminine’, rather than aggressive (masculine):

‘It wasn’t just sex. It was – we were friends ... we would talk about records, music we liked, film stars, you know things girls do; clothes; we would talk about the children together.’<sup>229</sup>

Rose’s sexuality was further constructed as feminine by countering the prosecution’s construction of her sexual aggression and describing the relationships as egalitarian and her role as passive, a traditionally feminine role:

‘There was not thrill in a relationship with me if it was not consensual.’<sup>230</sup>

Counsel ‘... did you bring any pressure to bear on Kathryn Halliday?’

Rose ‘She came of her own free will.’<sup>231</sup>

The combination of sexuality and maternity in the defence case, therefore, served two purposes. They countered the defeminisation and demonisation of Rose by the prosecution and they introduced an alternative understanding of Rose’s character. The latter understanding was intended to make her role in the murders improbable due to her status as a woman. One of the key elements introduced by the theme of sexuality was passivity. Rose’s sexual passivity reflected an additional important theme in the defence case; that of passivity / powerlessness. These themes countered the prosecution’s contrary construction of Rose as the ‘leader’, equal, active and acting with agency.

### Power

An important element of the prosecution case was establishing that Rose played an active role in the killings. This was demonstrated through several media, the first being her active role in sexual attacks and relationships (above). This portrayal was

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<sup>228</sup> 31/10/95 p50

<sup>229</sup> 31/10/95 p46

<sup>230</sup> 31/10/95 p49

<sup>231</sup> 31/10/95 p51



supplemented by the more basic construction of an equal and informed relationship between her and Fred and evidence that she had been in control of the household.

This latter proposition anticipated and contradicted the defence's contention that Rose was dominated and abused by Fred and that she was a passive and thus feminine woman. She was portrayed by the prosecution from the very beginning as 'in control':

'She made entries in her diary recording the receipt of rent and she ran the house.'<sup>232</sup>

'(Rose) ran her life with Fred West.'<sup>233</sup>

This theme of the woman in control persisted throughout the trial, for example:

Counsel 'How did the relationship between the two of them seem to you ...?'

Witness 'Mrs West seemed to be the dominant character of the family.'

Counsel 'How did that manifest itself?'

Witness 'She always seemed to be telling everybody in the house what to do and when to do it.'<sup>234</sup>

Counsel 'Could you tell us from what you knew of them who ran 25 Cromwell Street?'

Witness 'Rose, Rose was the boss of the house.'<sup>235</sup>

The third proposition of the prosecution was that Rose was an equal and loyal partner to Fred. It was maintained that she had full knowledge of his activities and thus acted with agency throughout. The key to this construction was the closeness of the relationship between Fred and Rose:

'(they had) a sort of bond between them.'<sup>236</sup>

'They were such a close couple, they were really close.'<sup>237</sup>

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<sup>232</sup> Opening speech 6/10/95 p24.

<sup>233</sup> 6/10/95 p105

<sup>234</sup> 17/10/95 p13

<sup>235</sup> 17/10/95 p54, for other examples see 12/10/95 p53, 130 & 143 and 17/10/95 p84.



From this closeness the prosecution implied that Rose was an equal partner with equal knowledge:

‘They doted on each other. Rose had so much love for my Dad. She would have done anything for him ... They always, well I believe always, told each other what they were doing and had total trust in each other.’<sup>238</sup>

‘They were the type of people who didn’t hide anything from one another.’<sup>239</sup>

Thus, the prosecution anticipated and attacked the defence’s construction of Rose as without agency, a construction frequently applied to women in the criminal justice system in order to mitigate their culpability.<sup>240</sup>

‘Mrs West informed me that whatever Mr West did she would never leave him.’<sup>241</sup>

‘... she participated and bears the full measure of responsibility.’<sup>242</sup>

The other themes of deviant femininity, or even masculinity, in the prosecution case facilitated this construction of Rose’s agency. As masculine discourses, agency and control fitted well with the wider prosecution portrayal of Rose and were more convincing when viewed in conjunction with it. In addition to ‘evidencing’ Rose’s willing role in the murders, this type of testimony provided another means through which Rose’s femininity was undermined and her character slurred. However, through this portrayal she was not only constructed as active, but as dominant; according to the prosecution she embodied an inverted gender role.

An examination of the testimony of Rose herself and the cross-examination of the prosecution witnesses reveals that the defence adopted the feminine discourse of

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<sup>236</sup> 10/10/95 p142

<sup>237</sup> 10/10/95 p56

<sup>238</sup> 18/10/95 p115

<sup>239</sup> 10/10/95 p56

<sup>240</sup> See Ch 2.

<sup>241</sup> 10/10/95 p142

<sup>242</sup> 6/10/95 p105



passivity in order to counter this construction of her agency. Like the power theme in the prosecution case, passivity worked in conjunction with the wider construction of Rose as gendered. In the defence case she was passively feminine.

The defence's cross-examination of the prosecution witnesses countered the claims that Rose was a woman with agency by portraying her as dominated and abused by Fred. Thus contradicting notions of agency ran throughout the trial. Her subservience was evidenced in the following excerpts from the defence questioning.

‘Can you remember him coming in and saying something along these lines to Rose: That if she did not come back with him within ten minutes, that she would find that her place in his bed would be occupied by another woman?’<sup>243</sup>

‘... in fact you and Fred West were in your bedroom in your flat during the time that you thought that Mrs West was safely tucked up in hospital having given birth to her baby?’<sup>244</sup>

Counsel ‘Did she seem frightened of him?’

Witness ‘She seemed frightened, yes.’<sup>245</sup>

‘He used to hit her on occasions?’<sup>246</sup>

Counsel ‘Did you ever see any signs that Mr West had actually physically ill-treated his wife?’

Witness ‘Yes, I saw once when Rose came downstairs and her glasses had been broken and she had a black eye.’<sup>247</sup>

The testimony of Rose herself countered the three stages of the prosecution construction of her responsibility. It portrayed a distant and unequal relationship and a woman who was without agency. Again, key in this portrayal was the construction of the relationship between Rose and Fred. The relationship itself was revealed to be unequal from the very

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<sup>243</sup> 9/10/95 p74

<sup>244</sup> 10/10/95 p87

<sup>245</sup> 9/10/95 p75

<sup>246</sup> 11/10/95 p105



beginning. Rose described how her difficult childhood and early teenage years made her a vulnerable target. She described how she was abandoned by her mother.

‘I expected the support of my mother and she just left me; she abandoned me ... it had a devastating affect.’<sup>248</sup>

She revealed her experience of sexual abuse whilst still a child.

‘I honestly thought he was going to kill me ... He raped me.’<sup>249</sup>

‘... he was very forcible ... he was very strong ... He dragged me down by the lake under some trees and he raped me.’<sup>250</sup>

Her testimony also described how as a consequence of this and her young age she was vulnerable to Fred’s advances:

‘I am afraid I was nursing old wounds from past history in my family, particularly when my mum left me at my sister’s ... Because I thought my mum had left me and my dad had abused my mum, and I just wanted someone to love me.’<sup>251</sup>

‘He promised me everything and because I was so young I suppose I fell for his lies ... He promised to love me and to care for me and I fell for it.’<sup>252</sup>

This description continued the theme of Rose’s experiences of victimisation. This theme was evident throughout the trial and was first noted in the analysis of her self-construction as a sexual victim of men (above). Her victimisation by Fred continued throughout the marriage as he dominated and controlled her.

Rose’s description of Fred as dominating and controlling served two purposes. First, it implicitly, constructed her as passive.

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<sup>247</sup> 17/10/95 p87

<sup>248</sup> 30/10/95 p34

<sup>249</sup> 30/10/95 p33

<sup>250</sup> 30/10/95 p39

<sup>251</sup> 30/10/95 p46



‘... he always brought the subject up, it was a daily thing he talked about, ehm, there is this very, very strong persuasion and reasons why I should (go with other men).’<sup>253</sup>

‘If I kept resisting he would use emotional blackmail and he would use anything. He could be very, very persuasive, pushy ... he would say things like: ‘You are not doing enough for the marriage’ or ‘I am the breadwinner ... I bring home the money, you have got to play your part in the marriage somehow’... he would never let up.’<sup>254</sup>

‘I was always persuaded by Fred.’<sup>255</sup>

‘I would always have to let Fred know once the pubs had closed exactly what I was going to do.’<sup>256</sup>

‘he was very, very persistent.’<sup>257</sup>

It seems from this testimony that Rose had identified a number of the discourses of female subordination which and framed her experiences and her defence within them. This contrasts with studies of earlier trials which reveal that these discourses were not available until recently, and thus women were silenced in the court.<sup>258</sup>

Rose’s subordination was supplemented by evidence of her passivity or lack of agency in her relationship with Fred:

‘There was just no choice with him, you had to conform.’<sup>259</sup>

‘I was vulnerable to his persuasion and his promises.’<sup>260</sup>

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<sup>252</sup> 30/10/95 p45

<sup>253</sup> 30/10/95 p60

<sup>254</sup> 30/10/95 p80

<sup>255</sup> 31/10/95 p24

<sup>256</sup> 31/10/95 p19

<sup>257</sup> 30/10/95 p40

<sup>258</sup> For example, see the work of A Ballinger *‘Dead Woman Walking: executed women in England and Wales 1900-1955’* Ashgate, Aldershot (2000). The same can be said to some extent of Myra Hindley, however her silence was also self-imposed as a consequence of her loyalty to Ian Brady.

<sup>259</sup> 30/10/95 p89



Most importantly, her lack of agency allowed her to explain her involvement in the attack on Caroline Owens:

‘I was frightened at the time. I was a young girl.’<sup>261</sup>

‘I was a young girl I was about, I believe, nineteen at the time and he had a lot of influence over me.’<sup>262</sup>

‘I believe I was as much as a victim as Caroline was.’<sup>263</sup>

Thus, the actions that were proved, the attack on Caroline Owens and other examples of her inappropriate sexuality, were explained by Fred’s domination and control of her.

Secondly, Fred’s domination and control of her explained the distant and unhappy marriage which she described. This portrayal of their relationship was important in supporting the credibility of her claim of ignorance and her self construction as passive. Rose described their relationship as deteriorating soon after they moved to Cromwell Street and as remote throughout the remainder of the marriage:

‘... we almost lived separate lives.’<sup>264</sup>

‘I wanted out. I wanted out of the marriage and out of the house.’<sup>265</sup>

This distancing reached its peak after Rose described her reaction when she found out what Fred had done.

‘After I heard about Heather I didn’t want to know him.’<sup>266</sup>

‘I hated him. I just saw him as – I didn’t see the man that I had known all those years. He just – I saw him – I saw him like ... with horns and complete with a

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<sup>260</sup> 30/10/95 p103

<sup>261</sup> 30/10/95 p99

<sup>262</sup> 30/10/95 p102

<sup>263</sup> 30/10/95 p100

<sup>264</sup> 30/10/95 p82

<sup>265</sup> 30/10/95 p102

<sup>266</sup> 31/10/95 p58



From this basis she could claim ignorance of the true nature of her husband. Further, such evidence was supportive of her claim that she was consistently dominated by Fred.

The construction of Rose's passivity was supported through her testimony by her use of passive behaviour in the court. This was illustrated in the transcripts of her speech, which is peppered with hesitations and hedges such as 'Ehm'. These speech patterns have been identified as powerless speech patterns by Laykoff who found them to be most often attributable to women.<sup>268</sup> However, later research argued that, whilst powerless speech patterns were often attributable to women, this is not the case for all women, or indeed just women, but also disempowered men.<sup>269</sup> In the context of this research it was claimed that powerless speech behaviour is likely to reduce the jury's acceptance of the truth of testimony by reducing the perceived credibility of the witness. However, this research fails to account for cases involving women when passivity is a vital part of their construction, as in Rose's case. On such occasions powerful speech types would appear incongruous within the content of testimony and undermine the self-construction of femininity.

The key role of Rose's passivity in both explaining her sexuality and why she stayed with Fred, in spite of his treatment of her, and in supporting her claim of ignorance explains why their relationship was the main theme of her cross-examination by the prosecution. By questioning her portrayal of their relationship the prosecution also undermined her claims of passivity and ignorance. Both her passive role in the relationship and the distant nature of the relationship were attacked. Rose's role was reversed, she was 'reconstructed' by the prosecution as dominating Fred, as the leader.

'You were the one who was determined to develop a relationship with him ... you were the one who even at fifteen and sixteen, had the ideas.'<sup>270</sup>

'You are the one with the ideas ... Your plans about seeing the children and

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<sup>267</sup> 31/10/95 p59

<sup>268</sup> Laykoff '*Language and Woman's Place*' *Language in Society* (1973) 2, 45.

<sup>269</sup> W O'Barr '*Linguistic Evidence: language, power and strategy in the courtroom*' Academic Press, New York (1982). P61-71.



dealing with arrangements for the children are your plans, they are what you are telling him ... So you are setting out how to proceed?’<sup>271</sup>

Her portrayal of their relationship was also transformed by the prosecution, who claimed that Fred and Rose were a close, inseparable couple:

‘You were utterly and completely devoted to him ... You remained utterly and completely devoted to him, at least until the time of your arrest.’<sup>272</sup>

‘Your correspondence with him whilst he was (previously) in prison reveals undying love and affection.’<sup>273</sup>

‘Your evidence that you were leading completely separate lives is simply untrue?’<sup>274</sup>

Not only was the relationship key as evidence of Rose’s inevitable knowledge and involvement, but the relationship itself was twisted by the prosecution during the cross-examination. It was her act of murdering Charmaine that consummated the relationship:

‘... from that moment on you were tied together forever.’<sup>275</sup>

And, according to the prosecution, it was her devotion to Fred which provided the motive for the murder of Shirley Robinson.

‘The prospect of risking your relationship with Fred was just too great.’<sup>276</sup>

Ultimately the prosecution claimed that contrary to having a passive role Rose’s was the active one:

‘What is happening Mrs West is this; it is not everybody dumping everything on

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<sup>270</sup> 30/10/95 p74

<sup>271</sup> 30/10/95 p75

<sup>272</sup> 30/10/95 p71

<sup>273</sup> 30/10/95 p75

<sup>274</sup> 30/10/95 p90

<sup>275</sup> 31/10/95 p126

<sup>276</sup> 31 10/95 p74



you; it is you dumping everything else on Fred West.’<sup>277</sup>

In this last quote the reversal of Fred and Rose’s roles is taken to a new level. The quote reveals a new theme that began to emerge: the construction of Fred as a victim.

What emerges from this analysis is that once again the defence and the prosecution were concentrating on the same themes and merely adopting different portrayals of them. The pattern is as before, a feminine portrayal by the defence and a portrayal of inappropriate femininity by the prosecution. These gender-based constructions were a crucial part of the theories of the two opposing sides, building a picture of a woman who was quite capable or incapable of being involved in murder.

### **The Use of Other Feminine Discourses**

Unlike Myra’s trial, themes such as ‘emotions’, relationships, and shame did not feature heavily in the Rose’s trial. In Myra’s case these themes played a relatively more substantial role in the construction of femininity in the trial as the focus was not concentrated so fully and consciously on maternity and sexuality but spread across a number of other discourses. The construction of femininity in Rose’s trial was more structured, focused and sophisticated. Here the themes of maternity and sexuality dominated, and other less significant discourses were ignored or neglected. In contrast, the approach in Myra’s trial, thirty years earlier, indicated that the gender construction in court was a manifestation of ingrained cultural construction; it was undefined and was merely one aspect of portraying the defendant in a good or bad light. As a consequence, unsophisticated gendered notions of woman were reflected in the discourses in the trial. The cultural changes which occurred since the 1960s and the greater emancipation of women meant that Rose’s trial was constructed differently. The importance of femininity in the criminal justice system demanded that it be included by both the defence and prosecution in support of their arguments. What is evident, therefore, is a more obvious and seemingly calculated or deliberate inclusion of femininity in Rose’s trial. In addition, the use of gender to construct the accused as good/bad, innocent/guilty is more dominant in Rose’s trial.

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<sup>277</sup> 30/10/95 p94



That is not to say, however, that other discourses traditionally associated with femininity were entirely excluded from Rose's trial, they merely featured less. Characteristics positively associated with femininity such as emotions and feelings of shame were present in the defence's examination in chief of Rose and helped to present her as a normal woman; that is as exhibiting typical female responses. So, for example, Rose's testimony enabled her to describe her emotional response to the events in her life up until her arrest. These descriptions allowed her to explain or mitigate her behaviour with reference to the events that occurred in her family and to her as an individual before and after she met Fred. For example, these included the effect of the rapes, of being abandoned by her family and her love for children. Most importantly, they explained why she became involved with Fred:

Counsel 'What were your feelings towards this man?'

Rose 'Well sir, he promised me everything, and because I was so young I fell for his lies, though I didn't realise they were lies at the time. He promised to love me and care for me and I fell for it.'<sup>278</sup>

The focus on her emotions also served to feminise her reaction to events around which the prosecution constructed her response as unfeminine, such as the attack of Caroline Owens and the disappearance of Heather.

Counsel 'What were you terrified of?'

Rose 'Of everything. I was frightened on Caroline's behalf. I was frightened for me.'<sup>279</sup>

'I felt - I felt upset about Heather and I wanted him to comfort me ... I needed to get my thoughts together and try and control the feelings I had.'<sup>280</sup>

Rose's feminine emotional response also included a degree of shame for her behaviour. For example, she was ashamed that it was her relationships with other men that upset

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<sup>278</sup> 30/10/95 p45

<sup>279</sup> 30/10/95 p100

<sup>280</sup> 31/10/95 p30-31



Heather,<sup>281</sup> of her involvement in the attack on Caroline Owens<sup>282</sup> and the fact that Fred was having a baby with Shirley Robinson.<sup>283</sup> These emotional responses which were portrayed through Rose's testimony provided additional and subtle support to the construction of her as feminine through maternity and sexuality.

However, subtle discourses were also employed by the prosecution in support of the defeminisation of Rose. The predominant discourse employed for this purpose was that of 'deviousness' and lying.<sup>284</sup> This theme at its most basic level relates to the truth of evidence, for example, the prosecution submitted that much of Rose's evidence was 'simply untrue'.<sup>285</sup> However, the theme works in conjunction with and becomes part of the theme of deviousness which ran through the trial as described above (for example, the use of her femininity by Rose to 'entice' her victims to the house). The accusations were numerous throughout the opening speech and the cross-examination of Rose herself:

It is incredulous for Mrs West to pretend that she does not and did not remember such a dramatic and disturbing part of her life.'<sup>286</sup>

'... an immediate spontaneous lie'<sup>287</sup>

'... a complicated lie ...'<sup>288</sup>

Such claims related not only to the truth of the evidence concerned with the case, but her general capacity to lie:

'That is to deceive you parents is it not?'<sup>289</sup>

Thus, the construction of Rose as devious served not only to challenge the evidence she

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<sup>281</sup> 31/10/95 p24

<sup>282</sup> 1/11/95 p11

<sup>283</sup> 1/11/95 p59

<sup>284</sup> As noted in chapter 4, lying is associated with femininity. This is borne out, for example, in the work of Pollack. (O Pollack *The Criminality of Women* A.S.Barnes, New York (1961)).

<sup>285</sup> 6/10/95 p93

<sup>286</sup> 1/11/95 p21

<sup>287</sup> 1/11/95 p21

<sup>288</sup> 1/11/95 p71

<sup>289</sup> 31/10/95 p74



was giving but also to impugn her character with the traditional stereotype of the devious woman.

A second theme which was employed by the prosecution to attack Rose was again one traditionally associated with femininity, albeit bad femininity. Pathology, explains women's acts or crimes in terms of sickness.<sup>290</sup> However, what was particularly strange about the use of this theme here is that it related to Rose's sexuality, which during the prosecution case was constructed as masculine. The use of pathology during the cross-examination of Rose, therefore, illustrates that there continues to be a strong gravitation toward feminine discourses and themes in spite of the availability, identification and use of masculine themes. Counsel, despite drawing heavily on discourses of 'badness', were unable to fully abandon discourses of 'madness'. For example, it is noted that Rose was advised to seek medical attention following her conviction for the attack on Caroline Owens:

'You did not ever have medical attention did you?'<sup>291</sup>

'You never went to see a doctor about abnormal sex urges ...?'<sup>292</sup>

'You have still not had any treatment have you?'<sup>293</sup>

Although these supplementary themes played only a minor part in the construction of Rose by the defence and the prosecution, they were part of the general aura of gender construction which is evident in the transcripts and thus provided 'background' support for each side's portrayal. It is worth noting that all the discourses identified thus far were also evident in Myra Hindley's trial. By the 1990s, however, these discourses were refined and had gained their own language and greater power. Furthermore, counsel were now clearly aware of both their existence and power and refined and selected for emphasis those which would prove most useful to their cases.

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<sup>290</sup> H Allen '*Rendering them Harmless*' in P Carlen and A Worrall '*Gender Crime and Justice*' Milton Keynes, OUP (1987).

<sup>291</sup> 1/11/95 p23

<sup>292</sup> 1/11/95 p30



## **Nomenclature**

### **Maternity and Nomenclature**

Nomenclature, as introduced in the previous chapter, can play a number of roles in a trial including, for example, the implication of respectability or the distancing of parties. These roles were played out in Myra's trial, but performed a less substantial role in Rose's trial. This may be for any number of reasons but in the light of the various patterns uncovered in this research the most likely explanation is the shift to a sophisticated and developed construction of reality in the trial. Naming patterns in Myra's trial, like the other themes in the trial reflected cultural reality outside the courtroom and so numerous subtle factors played a significant role in the construction of reality. As a consequence of cultural changes and the mass of research and general growth of knowledge surrounding the trial process since 1966, the use of gender in the courtroom was more deliberate in 1995. This was reflected in Rose's trial and thus techniques such as nomenclature were overlooked as more recognisable and concrete means of construction became almost the sole focus, such as maternity and sexuality.

In terms of maternity, gauging patterns of naming served only one purpose in the analysis of constructions. The frequency with which Rose's family were named supports the argument that her maternity served as a defence to the accusations against her. This was particularly evident when both the prosecution and the defence questioned Rose on difficult issues such as the disappearance of Heather, Charmaine or Shirley Robinson, the abuse of Anne Marie or her relationship with Fred. At these times there was a greater reference to other children in the family as Rose explains her behaviour or ignorance through her preoccupation with her family.

### **Nomenclature in the Allocation of Responsibility**

In the instant context naming patterns are helpful, however, in confirming the construction of Rose's active role in the killings. This is evident at a most basic level; the frequency of naming. Rose was named more frequently in the testimonies of the

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<sup>293</sup> 1/11/95 p33



surviving victims than Fred. For example, in the testimony of Miss A, Rose was named twice as often as Fred, the pattern was intensified in the testimony of Anne Marie; when describing her abuse Fred was named only 26 times compared to Rose who is named 68 times. Further, the frequency with which Fred and Rose were referred to jointly fell in descriptions of abuse as Rose was constructed as acting independently of Fred. The mode of naming employed during these descriptions is also significant. Both 'Fred' and 'Rose' were addressed as such by both the witnesses and the Barristers which contrasts with the typical use of naming in the courtroom of title plus surname (Mrs West). Such a use generally denotes a reduced level of respectability or credibility.<sup>294</sup>

Naturally there was some effort by the defence to reverse these patterns during the cross-examinations. In terms of frequency Fred was named equally if not more frequently than Rose. Similarly, the number of times Rose was mentioned in direct relation to Fred (eg Rose and Fred) increased as the prosecution's portrayal of her as acting independently was countered by the defence. This pattern is most notable and interesting in relation to the abuse of Anne Marie. Not only was Fred most frequently named but also he was named not as 'Fred' but as 'her Dad' or 'her father'. This emphasised not only his greater role but also the closeness of his relationship with her, and thus his abuse of that relationship, whilst simultaneously indicating Rose's distance from them both. These patterns support the above findings that the focus of the testimonies shifted from the acts of Rose to those of Fred in order to construct her contribution as minimal and to facilitate her construction as passive.

### **Fred West**

An integral part of defining Rose and her role in the murders was inevitably defining Fred. He was defined by both sides implicitly by their construction of Rose and their relationship. For example, above, Fred appeared for the defence as a controlling, domineering and abusive husband. However, both sides explicitly constructed Fred in a way which best fitted their theory of the case.

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<sup>294</sup> See Ch 4.



Perhaps unsurprisingly, Fred did not feature heavily in the prosecution case. In fact, the prosecution purposefully deflected attention away from him so that the focus was directed to Rose and she was seen predominantly in relation to the crimes.<sup>295</sup> Although there was no denial of Fred's abnormal sexuality it did not feature in the same way as Rose's. For example, the attacks and rapes described by the witnesses in the prosecution case placed Rose not Fred at the centre of the action. Fred was merely a shadowy figure who appeared transiently in the accounts or remained at the periphery of the action.

The construction of Fred's sexuality was essentially very different from Rose's. Rather than violent and aggressive he was regarded and portrayed by the witnesses merely as 'crude', or 'smutty'. Their descriptions did not condemn him in the same way they did Rose:

'I thought Fred was a bit of a story teller, he was a bit crude, a bit smutty.'<sup>296</sup>

'... I had become aware of Fred talking about his sexual encounters, almost bragging about them. I think he fancied himself as a bit of a Don Juan.'<sup>297</sup>

'... Fred boasted about having sex with other women ...'<sup>298</sup>

'... he always boasted about his conquests basically ...'<sup>299</sup>

This was a description of a harmless and masculine sexuality; it was behaviour not considered atypical of men, but merely amounted to innocuous bragging or boasting.<sup>300</sup> Even when Fred's acts were innately harmful many of the prosecution witnesses minimised or excused his behaviour. For example, Caroline Owens described how, whilst he was removing the bindings that tied her, Fred cut her:

Counsel 'Did Mr West say anything about that?'

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<sup>295</sup> See above.

<sup>296</sup> 13/10/95 p44

<sup>297</sup> 18/10/95 p45

<sup>298</sup> 18/10/95 p48

<sup>299</sup> 17/10/95 p94

<sup>300</sup> Whereas aggressive sexuality is not concordant with femininity it is a characteristic of masculinity. See L Bibbings 'Boys Will Be Boys: Masculinity and offences against the person' p234 in D Nicolson and L Bibbings 'Feminist Perspectives in Criminal Law', London, Cavendish (2000).



Witness 'Yeah he apologised.'<sup>301</sup>

And having raped her she described how he became upset:

Witness '... when Fred raped me he started crying after.'

Counsel 'Yes?'

Witness 'And he apologised for hurting me.'<sup>302</sup>

One prosecution witness even commented that Fred was ...

'... a nice bloke as far as I was concerned ... he took us out for drinks ...'<sup>303</sup>

Thus, Fred's dangerousness and his sexuality were minimised and constructed as innocuous.

This contrasted strongly with the construction of his sexuality by the defence. A large proportion of the defence case was devoted to calling witnesses and reading statements illustrating Fred's dangerous sexuality. Seven witnesses were called testifying to rapes, stalking, attempted abductions and sexual assaults all committed solely by Fred.

'He pushed me on the bank and he raped me.'<sup>304</sup>

'... he was looking up my skirt and I got the impression he was a dirty man.'<sup>305</sup>

'I then received a great amount of verbal sexual abuse over the phone.'<sup>306</sup>

'... he had his arm around my throat dragging me back into the car.'<sup>307</sup>

'I became aware of someone following me. I recall turning round and seeing a man with his penis exposed. He appeared to be masturbating ... great force was

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<sup>301</sup> 10/10/95 p140

<sup>302</sup> 10/10/95 p151

<sup>303</sup> 12/10/95 p58

<sup>304</sup> 1/11/95 p147

<sup>305</sup> 2/11/95 p40

<sup>306</sup> 2/11/95 p41

<sup>307</sup> 2/11/95 p31



being used when pulling my hood, so much so, that my hood chord was cutting into my throat.’<sup>308</sup>

‘I continued to struggle with him and he became more and more violent, punching me ... several times.’<sup>309</sup>

This evidence portrayed Fred very differently from the defence construction of Rose. The accounts of Fred’s sexuality depicted a dangerous, predatory sexuality. This portrayal by the defence did not, however, carry with it the same power as the opposing one offered by the prosecution of Rose’s sexuality. This may have been for a number of reasons. First, it is important to note that whilst male sex offenders break the law, they do not break gender roles, in fact it has been argued that sex offending is a consequence of society’s construction of masculinity.<sup>310</sup> Thus Fred’s behaviour, whilst being criminal, was not ‘doubly deviant’. Rose, as portrayed by the prosecution, was doubly deviant. She was located in the home in the prosecution testimonies which described her aggressive sexuality and was constructed as exploiting her femininity to lure victims to the house. Thus she had committed a double offence - a criminal offence and an offence against femininity. Perhaps, therefore, the defence’s construction of Fred’s sexuality had a weaker impact on the jury. Secondly, the majority of defence witnesses were not allowed by the judge to give their evidence verbally and the defence therefore simply read their statements to the court. Consequently, their evidence was marginalized and did not carry with it the same emotive power of the prosecution victims who described attacks in person.

Despite these innate weaknesses additional discourses or themes were included in the defence case which attack Fred’s masculinity. He was portrayed as both a bad father and a bad husband. The roles were constructed predominantly during Rose’s testimony and, therefore, contrasted with her self-construction as a good mother and wife. As a husband Fred was both neglectful and violent:

Counsel ‘Did he come home from work each evening?

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<sup>308</sup> 2/11/95 p50

<sup>309</sup> 2/11/95 p47

<sup>310</sup> D Cameron and Fraser *The Lust to Kill: a feminist investigation into sexual murder* Cambridge, Polity in association with Basil Blackwell (1987).



Rose 'Sometimes he would, sometimes he wouldn't.'

Counsel 'The evenings he would not come home from work would he come home later ...?'

Rose '... well after midnight.'<sup>311</sup>

'He spent a lot of time with them (the female lodgers). He was always doing something for them, giving them a lift here or taking them around to their Mum's.'<sup>312</sup>

Rose 'If he was in a bad mood he'd get jealous of the other men and would use his fists and hit me.'

Counsel 'Did that happen once or more than once?'

Rose 'No it was a regular thing.'<sup>313</sup>

Not only was he neglectful of his wife but he was disruptive of the family. For example, Rose described how it was Fred who insisted that they get the lodgers, who ruined their rooms and were constantly in trouble with the police. Fred however 'seemed to revel in all the upheaval, all the - the police coming was just a joke to him.'<sup>314</sup>

Rose described how Fred's disruption and neglect also extended to the children. Having made Rose have children with other men Fred jeopardised the family further.

'I wanted those children to be part of my family and I didn't want the fathers to know; but Fred told them anyway.'<sup>315</sup>

Fred was also revealed to be a bad father:

Counsel 'Did Fred have his favourites or treat the children the same?'

Rose 'No, I believe he had his favourites. Anne Marie was one and my son Stephen was another.'<sup>316</sup>

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<sup>311</sup> 30/10/95 p95

<sup>312</sup> 30/10/95 p83

<sup>313</sup> 30/10/95 p85

<sup>314</sup> 30/10/95 p80

<sup>315</sup> 30/10/95 p93

<sup>316</sup> 31/10/95 p42



Counsel 'Was her (Anne Marie's) father about during the day to help in making sure that she grew up in a proper and correct fashion?'

Rose 'No sir, he wasn't around a lot.'<sup>317</sup>

Counsel 'Was Fred supportive, did he help you?'

Rose 'No, no.'<sup>318</sup>

Not only was Fred unsupportive of Rose in her role as mother but he was also a disruptive influence and a bad father. Rose described how his disruptive influence made her job as a mother difficult by causing problems with Anne Marie:

'... me and Anne Marie got on fine when her father wasn't around.'<sup>319</sup>

'I tried my best with Anna, I did my best for her. I had to fight Fred, physically fight Fred, to be able to look after her to any little degree at all.'<sup>320</sup>

Finally, Rose's testimony revealed that Fred failed to provide sufficient financial support for the family. As a consequence, Rose took jobs as both as a cleaner and as a barmaid during their marriage. Thus, both as a husband and a father Fred was constructed as inadequate through Rose's testimony.

Rose's testimony further compounded Fred's inadequacy. She described how, in spite of these failings, Fred did receive her support and that of his family for many years. The defence explained this loyalty through Fred's hypnotic charm. This construction provided the final dimension of the portrayal of the character of Fred by the defence:

'Like others she fell under his spell.'<sup>321</sup>

'... he promised me the world, he promised me everything ... he promised to love me and care for me and I fell for it.'<sup>322</sup>

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<sup>317</sup> 31/10/95 p42

<sup>318</sup> 31/10/95 p82

<sup>319</sup> 31/10/95 p40

<sup>320</sup> 31/10/95 p45

<sup>321</sup> 30/10/95 p16



It is not only Rose who was subject to his 'charms' however:

'She (Anne Marie) went and visited him in Winson Green and she was loyal to him even then, even though she knew what he had done. He had killed her mother and her two half sisters, and it didn't seem to matter to her at all. She just thought the world of him.'<sup>323</sup>

This construction of Fred's power over women was used throughout the defence case in order to explain Rose's loyalty to him.

The prosecution portrayed a very different version of Fred. He was presented as an almost pitiful man who attempted to be chivalrous and to protect his family but who could not follow through. This construction served two purposes in addition to the obvious evidentiary one.<sup>324</sup> By including his attempt to be chivalrous, space was created for Fred to be reconstructed, perhaps not as a good father and husband, but as a better father and husband than was portrayed by Rose. Secondly, by including evidence that he revoked his promise to protect them, Fred was rendered weak and thus doubt was cast upon Rose's claims of his domination and strength.

These themes revealed Fred's construction of himself, as evident through his taped interviews, as being concerned with the welfare of his family. In admitting his guilt and taking sole responsibility Fred attempted to justify his actions through that concern. For example, during his interviews Fred told how he killed Shirley Robinson because she was using the children to supply drugs, had raped Anna and threatened to tell Rose that she was pregnant by him. Following this testimony, during which substantial parts of Fred's interviews are quoted, Fred was seen to deteriorate. The rebuttal evidence moved on to his imprisonment following arrest. This evidence focused on proving that Fred's assumption of responsibility was a lie. The testimonies transformed Fred into a man struggling to protect his wife and family. The story they told was almost romantic. The story involved two themes; first, the strength of feeling Fred had for Rose and the children and the sacrifices he was prepared to make for them, and second, the victimisation of Fred himself.

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<sup>322</sup> 31/10/95 p45

<sup>323</sup> 31/10/95 p44



Fred's suicide notes embodied the love he had for Rose and the children and thus explained why he wished to protect them through his sole acceptance of responsibility. The notes were read by the prosecution:

'We will always be in love. The most wonderful thing in my life is when I met you ... Lay Heather by us, we loved Heather and I would love for Charmaine to be by Heather with Rena ... All I have is my life and I will give it for you my darling.'<sup>325</sup>

The testimonies of those who knew him after his imprisonment explained that, according to Fred, he and Rose had made a pact that he would 'take the blame' so that Rose could go back to the children. The judge explained that these testimonies could not be used as evidence against Rose, they were based on hearsay, but were merely submitted to rebut the defence evidence that had implied Fred took sole responsibility and to show that Fred was unreliable. The fact is, however, that the testimonies explained how Fred reneged on his promise to Rose and confessed to the various witnesses that she was involved. It is unlikely that the jury were able to draw the fine evidentiary distinction which the judge asked of them.

Fred's betrayal, which was embodied in these testimonies, would ordinarily render Fred a coward. However, the theme of his victimisation which was woven throughout the rebuttal testimonies<sup>326</sup> elicited sympathy for Fred and portrayed him as man struggling against many forces:

'(quoting Fred) Nobody spares a thought for what I've lost in this. I've lost more than anybody else.'<sup>327</sup>

'... he had become tearful following a disagreement with his solicitor and staff on

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<sup>324</sup> That his admissions to the murders were an example of his chivalry.

<sup>325</sup> 7/11/95 p59

<sup>326</sup> Rebuttal evidence can be submitted when a new issue has arisen and totally new evidence has been discovered that can be used in rebuttal, the new evidence cannot be something the prosecution had possession of, but did not use. R DuCann *The Art of the Advocate* Harmondsworth, Penguin (1964), p182.

<sup>327</sup> 7/11,95 p46



the wing were concerned about his mental state.’<sup>328</sup>

‘... he felt his solicitor had manipulated him and he was upset that he may have said to the police things that he should not have done.’<sup>329</sup>

‘... (he) felt he had already been, he had already been through enough; by that he expanded that he had lost his two daughters, his wife etc.’<sup>330</sup>

Ultimately Fred claimed that Rose was solely to blame for the killings:

‘He claimed that his wife was burying people in the house without his knowledge.’<sup>331</sup>

‘The last thing he said was that he blamed his wife for sexual abuse of the children and using them for prostitution.’<sup>332</sup>

‘He said that ... he wasn’t very good at sex and that she was more demanding but that he would do anything for her.’<sup>333</sup>

This construction portrayed Fred as fighting to protect his family and particularly Rose, but that in the face life-long imprisonment he struggled to do so. It is likely that this had the effect of provoking anger that Rose had sought to remain blameless.

The above constructions once again supported the opposing contentions of the defence and prosecution. Rose’s testimony first began to mould an image of the man who was a vital part of the crimes and, yet, throughout the prosecution case had remained a shadowy figure who only occasionally came to the fore of the story. Her construction was of a man who has repeatedly failed in his duty to his family, despite which he was rewarded with their continuing loyalty, until she discovered the truth. The opposing construction by the prosecution was of a man devoted to his wife and his children and who even gave his life for them. The defence’s portrayal of Fred thus completed the

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<sup>328</sup> 7/11/95 p48

<sup>329</sup> 7/11/95 p50

<sup>330</sup> 7/11/95 p51

<sup>331</sup> 7/11/95 p52

<sup>332</sup> 7/11/95 p53

<sup>333</sup> 7/11/95 p67



image of Rose as a dominated and mal-treated wife who remained detached from her husband. The prosecution construction supported their contention that Fred and Rose were partners and even that perhaps Rose was the dominant party.

### **The Victims**

Traditional victimology has claimed that the criminal justice process marginalises the interests of victims.<sup>334</sup> However, Sarat<sup>335</sup> argues that the nature of the trial itself, which is focused around the reconstruction of the victim's injury, means that victims are not marginalised, but that 'victimisation' plays a central role in the process. Furthermore, the move toward the use of victim impact statements has in recent times amplified the victim's role. The use of victim impact statements is particularly associated with the sentencing stage of trials, although they are also used at other stages, for example bail hearings.<sup>336</sup> Although the power of victim testimony in the court, it appears, has not been fully explored, the power of victim testimony regarding their suffering and victimisation has been explored by the prolific research on the use and effect of victim impact statements. Critics of the use of these statements have argued that they are based on a desire to evoke anger and to empassion the listener against the defendant. Their effect is to 'provide a narrative which moves the jury from strangeness to familiarity, overcomes distance and establishes identification'.<sup>337</sup> In creating a 'relationship' between the victim and jury the prosecution seek to mobilise the jury to seek vengeance on behalf of the victim.

An examination of Rose West's trial reveals that victims can play a crucial role in the trial itself. Further, it reveals that the notion of 'victim' is not a discrete, predetermined category, but is a category that can be constructed through advocacy. In particular, the status of 'victim' it is not necessarily limited to the victim of the crime or crimes at issue.<sup>338</sup> The emotive power associated with victim status means that, on occasions,

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<sup>334</sup> Eg J Shapland, J Willmore, P Duff '*Victims in the Criminal Justice System*' Gower Publishing Company Ltd: Aldershot (1985).

<sup>335</sup> A Sarat 'Vengeance, Victims and the Identities of Law' *Social and Legal Studies* Vol 6(2), 163

<sup>336</sup> These statement are now being used routinely in many States of the USA and sveral pilot projects are currently underway in England. M McLeod 'An Examination of the Victim's Role at Sentencing' (1987) 71 *Judicature* 162.

<sup>337</sup> A Sarat 'Vengeance, Victims and the Identities of Law' *Social and Legal Studies* Vol 6(2), p177.

<sup>338</sup> For example McBarnet argues that the nature of the adversarial process can lead to the victimisation of the defendant as he or she becomes the subject of a degradation ceremony. Thus the term victim is



victim status may be actively sought in order to strengthen the effect of testimony.

### **The Victims and the Prosecution**

Victim impact statements facilitate the communication of the suffering imposed upon the victim by the crime predominantly after the crime has been proven. The prosecution in Rose's trial used the victims to communicate suffering as part of the trial itself. They sought to empathise the jury against Rose. The victims of a murder cannot however express their victimisation.<sup>339</sup> The prosecution, therefore, used two methods to express their suffering. The first was the heavy use of rhetoric in the opening speech. Secondly the prosecution called a number of witnesses who described sexual attacks and encounters with Rose (the surviving victims).<sup>340</sup>

### **The Opening Speech**

The prosecution's discussion of the victims in the opening speech was heavily laden with rhetoric. Rhetoric is the art of persuasion and through rhetoric in the trial of Rose West the prosecution sought to persuade the jury of Rose's dearth of femininity. This served two purposes. First, to present to the jury the image of a woman who was capable of the crimes she was charged with. This portrayal was crucial in order to rebut the presumption that women do not commit violent crimes, which forms a crucial part of the norm of femininity.<sup>341</sup> Second, the portrayal of Rose's deviant femininity provided an additional reason for her punishment, that is punishment for her double deviancy. In order to be effective in its persuasive role rhetoric seeks to empathise the listener, to motivate him or her to act in response to the argument (to convict or acquit). It is an emotive discourse, one which draws on deeply embedded notions of right or wrong and asks the listener to respond.<sup>342</sup> The heavy use of rhetoric is perhaps explicable because

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multifaceted. D McBarnet 'Victim in the Witness Box – Confronting victimology's stereotype' *Contemporary Crises*, 7, (1983) 293.

<sup>339</sup> However, those left behind may also be classed as victims of the crime and they are able to communicate their victimisation.

<sup>340</sup> The evidence of the witnesses is allowed on the basis of the rules of similar fact evidence.

<sup>341</sup> See Ch 2.

<sup>342</sup> P Goodrich '*Jani Anglorum: signs, symptoms, slips and interpretation in law*' in C Douzinas, P Goodrich, Y Hachamaritch '*Politics, Postmodernity and Critical Legal Studies: the legality of the contingent*' Routledge (1994), p111.



the opening speech does not constitute *evidence* and so counsel are permitted a greater latitude in this dialogue. The use of emotive language allows the prosecution to speak on behalf of the victims who are not present to testify to their own suffering.

Naturally the victims played a significant role in this trial, however, the reconstruction of their lives and their deaths was particularly important to the prosecution. The lack of direct evidence against Rose West meant that the victims played a more important role in the conviction than in normal cases. The prosecution case relied heavily on creating an emotive response in the jury evoking a guilty verdict. An important part of provoking such a response was the construction of the victims in such a way that they demanded sympathy and their deaths demanded punishment. Through the opening speech the victims were 'made real' or reified. Each of the victims were addressed in turn. Their lives before they meet the Wests were described and then their suffering, death and burials.

However, before the speech proper commenced, the description of the individual victims it introduced generally the horror of the murders as a whole. This introduction began with the killing of Heather, the oldest natural child of both Fred and Rose and, therefore, perhaps the victim who was likely to incite the most intense outrage and disgust. The description of her killing was crude and shocking, conveying the cruelty of the act:

'The skull had been hacked from the spine and the bones had been chopped to reduce the area into which the bones could be forced.'<sup>343</sup>

The introduction then went on to talk more generally about the killings, describing the nature of the discoveries:

'... skeletal remains of eight young women were found under the ground of 25 Cromwell Street, the home of Mr and Mrs West ... (they had been) dismembered, heads had been decapitated and in every set of remains bones were missing. Each was dumped without dignity or respect in a small hole some three foot below the

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<sup>343</sup> 6/10/95 p2



ground in the garden, the cellar and underneath the bathroom.’<sup>344</sup>

The introduction performed two functions. It described the facts of the case, but also began to set the tone for the opening speech which was designed to evoke and entrench sympathy for the victims and horror at the crimes.

‘... what they found was more terrible than words can express.’<sup>345</sup>

‘Their last moments on earth were as objects of the sexual depravity of this woman and her husband.’<sup>346</sup>

Following this introduction each of the victims was considered independently in chronological order. The descriptions, although independent, constructed a pattern of behaviour by the Wests. The pattern was expressed through two media, the first being repetition and emphasis of similar facts. For example, the description itself illustrated that the bodies were disposed of in a very similar manner, involving decapitation and disarticulation of the legs. However, the most clearly emphasised theme was the use of gags on the victims:

‘... other objects - now all too familiar - found with the body which are all to do with the gagging and restraining of this unfortunate young university undergraduate.’<sup>347</sup>

‘An object which has now become extremely familiar to you ... It is a knotted cloth loop,’<sup>348</sup>

‘As I have described the various bodies you will have become used to or at least hardened - to the discovery of circumference of tape associated with the skull which I suggested to you was clearly a gag.’<sup>349</sup>

‘It will come also surprise that around the top of the skull there was a band of

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<sup>344</sup> 6/10/95 p2

<sup>345</sup> 6/10/95 p2

<sup>346</sup> 6/10/95 p2

<sup>347</sup> 6/10/95 p52

<sup>348</sup> 6/10/95 p62

<sup>349</sup> 6/10/95 p68



fabric passing under the jaw and around the back of the head.’<sup>350</sup>

The emphasis on the gags was of particular importance as it was associated with the mode of death to which the victims were subjected and was thus part of the emphasis on the horrific nature of the crimes.

The second method of conveying the methodical pattern of murder was by constructing the descriptions themselves within a repetitive pattern. Each description comprised of four parts: the contextualisation and reification of the victim before meeting the Wests; followed by an ominous statement pertaining to the fate of each victim; a description conveying their suffering; and finally a description of the burial of the victim.

Each victim was first ‘contextualised’ and thus humanised as their family background and some of the characteristics were outlined. This process made the victims ‘real people’ to whom the jury could relate. The jury were intended to be able to understand exactly whose life was ended by the Wests as the ‘ghosts’ were resurrected through the prosecution’s description of them. However, resurrecting or reifying the victims could have been problematic as, excluding the Wests’s own children, they fell into two categories; those who may have provoked the disapproval of the jury and thus elicited less sympathy and those who were ‘good’, whose background and personality and characteristics were ‘wholesome’. In other words the status of the victims and the amount of sympathy they were likely to evoke may have been reduced if their behaviour was seen to have contributed to their deaths or they were regarded as undeserving. This is known as victim blaming. This is a phenomenon which is particularly evident in sex related offences. Women who move outside their allotted private space are regarded as running the risk of attack.<sup>351</sup> So, for example, hitchhikers have been regarded as soliciting attacks.<sup>352</sup> Victim blaming is a tactic frequently employed by defence counsel, particularly in rape cases.<sup>353</sup> Although the defence did not attack the characters of the dead victims during Rose’s trial, the prosecution anticipated the potential disapproval

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<sup>350</sup> 6/10/95 p74

<sup>351</sup> F Heidensohn ‘Models of Justice: Portia or Persephone? Some thoughts on Equality, Fairness and Gender in the Field of Criminal Justice’ *International Journal of the Sociology of Law* (1986), 14, p183.

<sup>352</sup> In one case, reported in the Guardian (15<sup>th</sup> April 1976), a judge ruled that an offender’s liability was diminished by his victim getting into his car.

<sup>353</sup> J Temkin ‘Prosecuting and Defending Rape: perspectives from the bar’ *Journal of Law and Society*. Vol 27, No2, June (2000), 219. J Temkin ‘Sexual History Evidence - The Ravishment of Section 2’



they may have attracted and the problematic victims were constructed by them as ‘vulnerable victims’. The victims’ lives were contextualised and the difficulties of their childhoods and backgrounds were spelt out to the court in order to explain their sometimes unfeminine behaviour.

The ‘vulnerable’ victims<sup>354</sup> were described as ‘difficult’, rebellious’, ‘disruptive’, ‘self-willed’ or ‘troublesome’. It is also clear that some of them were sexually active, for example, Lynda Gough was having sexual relationships with some of the lodgers at Cromwell Street. It was their construction as ‘vulnerable’ which redeemed them from potential disapproval. The prosecution described how each came from a difficult background, for example, coming from broken homes and frequently having spent time in care. This ‘contextualisation’ explained the problematic behaviour which on occasions was linked to their association with the Wests and ultimately, therefore, to their deaths. The most vulnerable to disapproval and criticism for her behaviour as contributory to her death was Shirley Robinson. Shirley had had sexual relationships with both Fred and Rose and eventually became pregnant by Fred. A combination of the description of her childhood and her relationship with the Wests, however, mitigated her troublesome and promiscuous behaviour. The prosecution explained that she was taken into care and that her mother lost touch with her and how, after meeting the Wests, she became a member of their family. The construction of Shirley was of a young girl seeking sanctuary in a family environment. Such constructions not only mitigated potentially problematic behaviour but even demanded *additional* sympathy for the victims on the basis of their difficult lives.

Lucy Partington and Therese Siegenthaler, unlike the vulnerable victims, were unproblematic in that they were in every way blameless for their fate. They were as perfect examples of women as they could be. The prosecution, as with the vulnerable victims, described the lives of these two young women. Each was immersed in her studies with no time for boyfriends. Lucy was described as ‘a serious minded but gentle girl’ whose interests included art and music.<sup>355</sup> Therese was ‘quiet and confident’ she

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(1993) *Crim LR*, 3.

<sup>354</sup> Lynda Gough, Carol Cooper, Shirley Hubbard, Juanita Mott, Shirley Robinson and Alison Chambers.

<sup>355</sup> 6/10/95 p54 & 55



‘looked young and wore no make-up’.<sup>356</sup> It was the proposition of the prosecution that unlike the vulnerable victims these girls had no prior association with the Wests but were kidnapped and later murdered. Both these victims and the vulnerable victims were therefore made real or resurrected through the prosecution’s description of them and the provision of a photo in almost all cases. Through this description each victim was also constructed as blameless and undeserving of their own fate.

In almost all cases this description and contextualisation was followed by an ‘ominous statement’ belying the fate which befalls each of the young girls:

‘Charmaine was never to be seen again.’<sup>357</sup>

‘This was the last contact Mr and Mrs Gough had with their daughter, she was still nineteen.’<sup>358</sup>

‘She was not seen again by the children’s home, she was not seen again by her boyfriend, she was not seen again by anyone whom she apparently knew.’<sup>359</sup>

‘She was never seen again ... There was no trace of her: she had no future.’<sup>360</sup>

‘She was never seen again, she did not go to the theatre.’<sup>361</sup>

‘Where she went and what she did we simply do not know. But we do know that she certainly fell into the hands of those at Cromwell Street.’<sup>362</sup>

‘(she) left the bungalow in the clothes she stood up in, she took nothing with her. She was never seen again.’<sup>363</sup>

‘Neither the home or her family have laid eyes on her since.’<sup>364</sup>

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<sup>356</sup> 6/10/95 p60

<sup>357</sup> 6/10/95 p15

<sup>358</sup> 6/10/95 p43

<sup>359</sup> 6/10/95 p51

<sup>360</sup> 6/10/95 p55

<sup>361</sup> 6/10/95 p61

<sup>362</sup> 6/10/95 p66

<sup>363</sup> 6/10/95 p72



These statements formed the link between the contextualisation of each of the victims and the description of their suffering and subsequent death and burial which formed the final stage in the pattern of their summaries.

As the summaries of the deaths and burials progressed through the speech so did the graphic nature of the language used to describe the burials and the suffering of the victims. An escalation of the horror of the murders is evident. The first description focused very little on the mechanics of the death, torture and burial. This was the description of Charmaine in which only a cursory description was given which conveyed sadness rather than horror.

‘Charmaine West lay in the ground for nearly twenty three years before being found and only then, accorded decency and respect.’<sup>365</sup>

Through the following three descriptions the detail and tone of the description of the burials became more graphic:

‘The body had been put into the pit which was then filled with loose stones, earth, metal and other debris.’<sup>366</sup>

‘The bones were friable ... many were missing particularly from the feet and hands. The body had been dismembered.’<sup>367</sup>

‘There is a black discolouration of the soil around the area where the remains were found, this is decomposed body tissue. Once again there are a number of bones missing ... the skull was taken off and the legs dismembered.’<sup>368</sup>

The graphic nature of the description peaked in the case of Lucy Partington:

‘... her remains were discovered chopped, dismembered and forced into a hole in

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<sup>364</sup> 6/10/95 p89

<sup>365</sup> 6/10/95 p4

<sup>366</sup> 6/10/95 p45

<sup>367</sup> 6/10/95 p46

<sup>368</sup> 6/10/95 p52



the cellar floor.’<sup>369</sup>

Thereafter this description plateaued and the description of suffering which had until then been minimised began:

‘Tape with hair on it probably binding Lucy’s mouth shut and ropes binding her limbs could only have been required to keep her alive but helpless ... the only reason to keep her alive at all to further sexual pleasure.’<sup>370</sup>

‘It does not matter that the knot could be pulled free; she would require a free hand to do that. Here then the naked dismembered body of a hitchhiker ... The only reason to abduct her must have been so that she might be abused either sexually or physically or both.’<sup>371</sup>

‘She must have been subjected to a terrible ordeal.’<sup>372</sup>

‘... a mask made of consecutive winding of brown adhesive tape passing around the skull from below the chin to above eye level. Inserted in the front of this mask was a narrow plastic tube in the nostril position ... its purpose can only have been to keep wholly under control, unable to see, unable to cry out, just able to breath. She had you may think, no chance at all ... precisely when what you may think became the blessing of death came to her we cannot say’<sup>373</sup>

‘The only purpose could have been to keep her helpless but still living and the only purpose of that would be for sexual gratification ... She died while being degraded ...’<sup>374</sup>

‘The belt found round her head clamping closed her jaw can only have been placed in position to stop her from screaming, to keep her silent. The purpose of such restraint must have been to permit abuse of the type experienced by others.’<sup>375</sup>

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<sup>369</sup> 6/10/95 p56

<sup>370</sup> 6/10/95 p59-60

<sup>371</sup> 6/10/95 p63

<sup>372</sup> 6/10/95 p67

<sup>373</sup> 6/10/95 p69-70

<sup>374</sup> 6/10/95 p75

<sup>375</sup> 6 10/95 p91



The horror of both the mode of death and burial culminated in the description of the death of Heather. Although the pattern of contextualisation, followed by description of the burial was the same as for the other victims, in the case of Heather this was by its very nature different, as she was the daughter of the accused, ‘she was the oldest natural child of Rosemary and Fred West’<sup>376</sup>. The contextualisation, therefore, placed her within her family, described how she and the Wests were suffering ‘serious problems’ and how after her disappearance their reaction was harsh and inappropriate. The tone of Heather’s profile also stands out from the others as there was a greater sense of sadness and a more prolific use of ‘ominous statements’ and a sense of inevitability:

‘She would have been an infant, a toddler, a very young child when first Charmaine<sup>377</sup> and then the others were killed one by one.’<sup>378</sup>

‘At the time of Alison Chambers’ death, Heather West was just short of nine years old. Nearly eight years past. Then she joined them.’<sup>379</sup>

‘Heather did not leave home. She was murdered and she was buried naked in the garden.’<sup>380</sup>

Following the description of each of the victims the concluding section of the opening speech amalgamated all the elements of the descriptions. The tone:

‘The police had to discover the name of each person who had once been a living girl but now a collection of bones ...’<sup>381</sup>

The suffering:

‘Graphic illustrations come from Lynda Gough with the ring of adhesive tape; Shirley Hubbard with that terrible mask; Juanita Mott with the clothes line

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<sup>376</sup> 6/10/95 p92

<sup>377</sup> Note however that Charmaine was not the first victim, Fred West had murdered at least two others before he met Rose. The effect of such a statement is however to link Rose inextricably with the murders.

<sup>378</sup> 6/10/95 p92

<sup>379</sup> 6/10/95 p91-92

<sup>380</sup> 6/10/95 p95

<sup>381</sup> 9/10/95 p20



intertwined about her limbs; Alison Chambers with the belt around the skull.’<sup>382</sup>

And the burial:

‘In most cases, the bodies have been demonstratively disarticulated with the legs removed from the hips. They had been decapitated, the skull taken from the top of the spine. In all...the position of the remains suggests how they were forced into small holes.’<sup>383</sup>

This pattern of the description of the victims served a number purposes for the prosecution. First, the methodical repetition of the profiles of the victims mimicked and emphasised the methodical and serial nature of the murders. Second the escalation of detail, horror and the use of emotive language introduced the nature of the crimes gently and went on to build a sense of disgust in the audience which culminated in the murder of Heather, the West’s own daughter. Finally, the construction of a profile of each of the victims, combined with the horrific details of their death, evoked hatred toward the accused and provided an emotionally charged atmosphere in which the trial was to commence.

### **The Testimonies**

The pattern of the representation of the victims established by the opening speech continued in the testimonies given by relatives and those who knew the victims. Their effect was more powerful than the rhetoric used by counsel in the opening speech as testimony is the most powerful form of dialogue in the courtroom. The testimonies performed the same function as victim impact statements. They allowed survivors to express their grief and to bring to life the personality of the victim for the courtroom audience.

As in the opening speech the victims were first contextualised and reified through the testimony of their friends or relatives.

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<sup>382</sup> 9/10/95 p20

<sup>383</sup> 9/10/95 p4



Charmaine:

‘Charmaine was her best friend, her first best friend.’<sup>384</sup>

‘She was a lovely little girl, happy little girl.’<sup>385</sup>

The explanation of the process of identifying the victims also meant that a photograph of the smiling face of Charmaine was projected in the courtroom for a considerable period, the image of the little girl killed by the Wests was therefore all too clear to the jury.

Lynda Gough:

Counsel ‘What sort of girl was she?’

Witness ‘Well she was cheerful, happy, friendly. She wasn’t withdrawn, she didn’t isolate herself. She wasn’t shy. She seemed to get along with most people quite easily.’<sup>386</sup>

Carol Cooper:

‘(she was) a friendly sort of a girl.’<sup>387</sup>

Lucy Partington:

‘Our respective families are very friendly and I suppose in a sense Lucy would regard this as her second home. She would visit me frequently ... Affectionately she is called Luce the Moose and I called her Luce. Lucy invented her nickname ... We have similar interests and specialise in Medieval English and Medieval Art and Music.’<sup>388</sup>

Therese Siegenthaler:

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<sup>384</sup> 9/10/95 p111

<sup>385</sup> 9/10/95 p57

<sup>386</sup> 11/10/95 p144

<sup>387</sup> 12/10/95 p70

<sup>388</sup> 12/10/95 p78



‘Therese was twenty one years old and an intelligent girl. As our friendship continued she would be a regular visitor at my house and occasionally looked after my young son. Therese was a very self assured person, physically. She was skilled at judo ... Therese was a perfectly normal girl ... I am aware that there were no particular boyfriends ...’<sup>389</sup>

Shirley Hubbard:

‘She had a slim build, but had a good figure. She had hazel/green eyes and had shoulder length fair brown hair, she was a very pretty girl ... She was a very single minded person and with a nice smile she could usually get her own way.’<sup>390</sup>

‘Shirley was a very quite and shy girl, but I got on well with her once the ice was broken.’<sup>391</sup>

Juanita Mott:

‘What sort of a girl was she? Lively, spirited ...’<sup>392</sup>

‘I did not meet any of her male friends. She would go out socially on a regular basis and would stay out overnight.’<sup>393</sup>

Shirley Robinson:

‘When I first met Shirley I found her to be withdrawn and sullen. She didn’t make friends easily with other girls.’<sup>394</sup>

Alison Chambers:

‘... we got on well. I would describe her as a tidy girl, and intelligent but she was

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<sup>389</sup> 12/10/95 p83-84

<sup>390</sup> 12/10/95 p94

<sup>391</sup> 12/10/95 p103

<sup>392</sup> 12/10/95 p107

<sup>393</sup> 12/10/95 p112

<sup>394</sup> 12/10/95 p116



prone to exaggerating and told stories about boyfriends...Alison was very clingy to me . It was as if she wanted constant affection and wanted to belong to something secure.’<sup>395</sup>

It is evident from the examples above that both Lucy and Therese were subject to a much greater contextualisation than the other victims perhaps because they were exemplary, faultless victims.

For those classified as ‘vulnerable victims’ the general contextualisation was minimal as it is clear that these victims lives were unconventional and it was often this unconventionality which led to their contact with the Wests. The focus, therefore, tended to be on placing them in the context of their problematic backgrounds as it was this which explains their unconventionality. For example:

‘In either 1961 or 1962 my marriage to Carol’s mother went through a very rough patch and we were separated at that time ... Although I paid maintenance to my wife for Carol, I had no contact with either of them ... In 1966 ... I was informed that my wife ... had died ... I took steps to take Carol back into my care and she moved in with us ... Between my separation from her mother and the time I was reunited with Carol in 1967 I had had no contact with her at all. Unfortunately my second marriage disintegrated. I had tried to set up home for Carol but too much time had passed ... When my second marriage broke up I placed Carol into the care of Worcestershire County Council.’<sup>396</sup>

‘Shortly after giving birth to Shirley (Hubbard) the three of us moved, to live in Worcester ... John (Shirley’s father) was taken into police custody ... I had to get a job so Shirley was taken into care with my consent. She was also ill with a heart problem ... I met Bernard Poulson ... I gave birth to two other children ... Shirley came to stay with Bernard and I, in fact she was returning to live with us (1965) ... John took Shirley for the weekend and never brought her back, the authorities then took over and she was placed back into care. I didn’t see Shirley again until 1974.’<sup>397</sup>

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<sup>395</sup> 13/10/95 p78

<sup>396</sup> 12/10/95 p71

<sup>397</sup> 12/10/95 p92, other such passages include Juanita Mott 12/10/95 p105, Shirley Robinson 12/10/95 p114 and Alison Chambers 13/10/95 p76.



These victims were enticed by the Wests who it was thought frequently targeted such vulnerable persons.

The final stage in the profiling of the victims, as in the opening speech, was the burial. Unlike in the opening speech however the description of the deaths and burial of each victim was not constructed with emotionally charged language but was bland and factual as this evidence was given by an 'expert', a pathologist. The details were presented in the form of an admission. For example:

'Shirley Robinson (born 8<sup>th</sup> October 1959) Location: Buried in the garden of 25 Cromwell Street. Dismemberment of the body: The head had been decapitated between the 4<sup>th</sup> and 5<sup>th</sup> cervical vertebrae. There is evidence of the disarticulation of the hips ... Injuries to bones: On the right femur there are at least eight deep chop marks. These chop marks had severed the bone completely. Burnishing on some of these marks indicates that they were made with a sharp blade, likely to be a cleaver or a heavy knife rather than a spade, unless it was extremely sharp. In addition there were 21 fine cut marks consistent with the edge of a sharp knife or light touches with the cleaver ... Missing Bones: Both patellae (knee caps). Seventh cervical vertebra. First and second thoracic vertebra ... Both twelfth ribs ... 28 (carpal) wrist and (tarsal) ankle bones out of a possible 30. 42 finger and toe bones out of a possible 76.'<sup>398</sup>

These admissions and other evidence of the pathologist spans sixty four pages, that is approximately two thirds of a days testimony. The facts were accompanied by photographs of the burial site, the bodies themselves and the gags and bindings which encircled them. The facts themselves and the graphic illustrations (the photographs) did not demand emotive commentary in order to convey the horror of the murders, they spoke for themselves. This was particularly the case in relation to Shirley Robinson, who was pregnant at the time of her death. The medical evidence revealed that her unborn baby had been removed from her womb.<sup>399</sup> This was stated in a low-key matter of fact way, and yet the horror of what took place is obvious.

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<sup>398</sup> 24/10/95 p48-49

<sup>399</sup> 4/11/95 p75



What appears to be an important theme in the representation of the victims in the trial is to ‘make them real’ in order to heighten the jury’s appreciation and understanding of their fate. Although this may be a theme of trials in general, the tenuous nature of the prosecution’s evidence meant that an emotionally induced desire for a conviction formed a major part of Rose’s trial.

### **The Surviving Victims**

This emotive response in the jury was further encouraged through the inclusion by the prosecution of ‘other victims’. The inclusion of their testimonies was allowed under the similar fact rules,<sup>400</sup> which was vehemently opposed by the defence. Their evidence dominated the prosecution case. The evidence the girls gave was designed to bridge the gap in the evidence created by the prosecution’s inability to tie Rose conclusively to the murders. By demonstrating her involvement in rape and abuse and her aggressive sexuality the prosecution sought to bridge that gap.<sup>401</sup> Consequently the trial, for a large part, became a trial (rape trial and sexual assault trial) within a trial (murder trial). However, in this trial, unusually, the defendant was a woman and so what emerged was the construction and counter construction of the femininity of both the surviving victims and Rose. These victims were those whose abuse, although not the subject of the trial, was used as evidence of Rose’s capacity to sexually abuse. They were living examples of the victimisation performed by her.

These witnesses were Caroline Owens, Miss A, Miss X, Kathryn Halliday and Anne Marie Davis<sup>402</sup> who through their testimonies described their abuse and who were clearly classified by the prosecution as victims:

‘Sir I think that at the time I was very, very low. I was very, very vulnerable and the scenario would be like a moth to a flame.’<sup>403</sup>

‘They wanted to push me beyond my personal limits ... when they began to hurt

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<sup>400</sup> *DPP v Boardman* (1975) AC 421, (1974) WLR 673.

<sup>401</sup> Femininity was used in this way in number of trials examined by Anette Ballinger in ‘*Dead Woman Walking: Executed women in England and Wales 1900-1955*’ Ashgate, Aldershot (2000)

<sup>402</sup> The abuse suffered by these victims is described above.

<sup>403</sup> 17/10/95 p123



me badly I began to ease off going because of the physical pain.’<sup>404</sup>

‘I have considered myself a survivor and I have fought to be a survivor ...’<sup>405</sup>

‘I was screaming and crying ... It hurt so much I just wished I was dead.’<sup>406</sup>

‘I wanted to kick I wanted to cry’.<sup>407</sup>

‘I remember I sat on my bed with my knees drawn up just rocking, crying.’<sup>408</sup>

Their stories were particularly provoking as their evidence provided living examples of the abuse carried out in Cromwell Street and their suffering was all too evident in the emotional way that their evidence was conveyed, as they frequently battled to recount their stories through tears. In fact, their emotional responses to the abuse they had suffered formed a theme in their questioning:

Counsel ‘What was your reaction to all this?’

Witness ‘Terror.’<sup>409</sup>

Counsel ‘How were you feeling?’

Witness ‘Sick, scared.’<sup>410</sup>

Counsel ‘So, by the time you arrived home what was your state like or condition like then?’

Witness ‘I remember crying. I was angry but upset.’<sup>411</sup>

Counsel ‘What was your reaction to seeing these things?’

Witness ‘I was frightened.’<sup>412</sup>

In addition to provoking an emotional response in the jury, the testimony of these

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<sup>404</sup> 17/10/95 p123

<sup>405</sup> 18/10/95 p7

<sup>406</sup> 18/10/95 p96

<sup>407</sup> 16/10/95 p52

<sup>408</sup> 16/10/95 p66

<sup>409</sup> 10/10/95 p136

<sup>410</sup> 10/10/95 p146

<sup>411</sup> 16/10/95 p64

<sup>412</sup> 17/10/95 p127



victims provided some insight into what happened to the dead girls, thus furthering the insight into their suffering.

### **The Victims and the Defence**

The response of the defence to the claimed victimisation embodied in the prosecution case was summarised by Rose in when she was confronted with their claim:

Counsel 'Miss A has given detailed account of how she was sexually assaulted by you and your husband and treated in an evil fashion. Is there any truth in that account?'

Rose 'No, sir, there is no truth whatsoever.'<sup>413</sup>

The defence case was based on denial. It was their case that Rose either never met the victims or admitted to knowing them but claimed to have been uninvolved in their abuse. In the case of those who Rose admitted to knowing, their experience was reconstructed by the defence case, most often directly through Rose's testimony. The reconstruction was of a good, affectionate or harmless association. Thus they were, for the defence, not victims of Rose at all.

In addition, in their response to the prosecution evidence the defence employed conventional victim-blaming and rejoinder gender stereotyping to undermine the testimonies of the surviving victims and reduce their power. The techniques employed by the defence were intended to remove the surviving victims' status and thus reduce or eliminate its benefits. Furthermore, impugning their credibility also attacked the testimonies as a source of evidence. This response by the defence is similar to the pattern of character decimation and victim blaming that characterises rape cases.<sup>414</sup> The surviving victims' examinations in chief and cross-examinations created a 'trial within a trial'. The trial drew on the now well-documented discourses of sexual promiscuity and female pathology which are routinely used to undermine the claims of victims of sexual offences. References to the sexual promiscuity of victims is frequently used to imply

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<sup>413</sup> 31/10/95 p15

<sup>414</sup> J Temkin 'Sexual History Evidence - The Ravishment of section 2' (1993) *Crim LR*, 3. S Lees 'Ruling Passions: sexual violence, reputation and the law' Buckingham, OUP (1997), Ch 3.



their consent in such trials,<sup>415</sup> whilst discourses of female pathology suggest that female victims are prone to fabricate or exaggerate their victimisation.<sup>416</sup>

In Rose's trial this 'reconstruction' of the victims was first evident in the cross-examinations of the 'surviving victims'. The cross-examinations alluded to 'victim blaming'.<sup>417</sup>

'You were willing to participate in the sexual activity which took place at 25 Cromwell Street?'<sup>418</sup>

'Because of what happened to you on the previous occasion Miss A, did that not act as a warning bell to you?'<sup>419</sup>

They also sought to minimise the extent of the victimisation.

'You have exaggerated that activity and have tried to portray yourself as a victim?'<sup>420</sup>

Counsel '... are you telling us Mrs Owens that you received no medication of any sort what so ever?'

Witness 'Yes, I didn't.'

Counsel 'Not even aspro?'

Witness 'No'

Counsel 'No stitches?'

Witness 'No'

Counsel 'No pads or bandages?'

Witness 'No, no.'<sup>421</sup>

Another tactic in undermining the testimonies was to attack the characters of the victims

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<sup>415</sup> Ibid.

<sup>416</sup> The notion of female lying was linked to her biological constitution by O Pollack *'The Criminality of Women'* A.S.Barnes, New York (1961).

<sup>417</sup> See P Rock *'The Social World of an English Crown Court'* Clarendon Press, London (1993) p72, also A Ballinger *'Dead Woman Walking: Executed women in England and Wales 1900-1955'* Ashgate, Aldershot (2000), p45.

<sup>418</sup> 18/10/95 p9

<sup>419</sup> 16/10/95 p91

<sup>420</sup> 18/10/95 p10

<sup>421</sup> 11/10/95 p64



themselves. It is hardly surprising that, given the theme of sexuality in the trial and the sex of the witnesses,<sup>422</sup> that this attack often took the form of an attack on their sexuality:

‘At the age of thirteen you were virtually uncontrollable ... Did you used to keep the company of young soldiers?’<sup>423</sup>

‘In December 1976 you had to attend the clinic in Cheltenham. Is that right ... for gonorrhoea?’<sup>424</sup>

‘Miss A, you were sexually active during 1976. Is that not right?’<sup>425</sup>

Similarly, the defence used other traditionally ‘feminine’ discourses to undermine these witnesses. The most prominent example was the treatment of these witnesses as ‘neurotic women’, drawing on discourses of pathology:

‘Because of the great difficulty you have had in facing the fact that you father abused you, in order to enable you to live with that you have dobed in your stepmother?’<sup>426</sup>

The direct consequence of this approach was to undermine their credibility and the truth of their testimonies so that the later testimony of Rose was more acceptable.

Having laid this groundwork, Rose’s testimony, went on to reconstruct the story of her association with the victims. In the cases where she admitted to knowing or having met them the reconstruction portrayed a good, affectionate or harmless association in which Rose frequently portrays herself in a maternal role:

‘I really saw her (Shirley Robinson) as a vulnerable child. I wanted to protect her, to give her somewhere until she could sort herself out ...’<sup>427</sup>

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<sup>422</sup> See Ch 2: there is a trend in the criminal justice system for women’s testimony to be attacked through evidence of their sexual histories. The most frequently cited example of this is in rape trials. J Temkin ‘Sexual History Evidence - The Ravishment of section 2’ (1993) *Crim LR*, 3, S Lees ‘*Ruling Passions: sexual violence, reputation and the law*’ Buckingham, OUP (1997), Ch 3.

<sup>423</sup> 20/10/95 p49

<sup>424</sup> 16/10/95 p109

<sup>425</sup> 16/10/95 p111

<sup>426</sup> 20/10/95 p55

<sup>427</sup> 31/10/95 p4



Her version of events supplemented her straight-forward denial of the prosecution claims by presenting her relationships with the victims as normal.

In addition to this reconstruction of the prosecution's surviving victims, the defence sought to bring evidence from other surviving victims. These were women who were the subject of lone attacks by Fred. By including evidence of these attacks the defence intended to show that Fred did murder, rape and abuse without Rose's involvement and, thus, that it was possible that he committed the murders alone and without her knowledge, and that she was not the dominating party in their joint attack on Caroline Owen (the only sexual offence to which Rose admitted).

The strongest evidence to this effect were the murders of Anne McFall and Rena West, Fred's first wife and nanny/girl friend<sup>428</sup> who were killed before Rose and Fred met. However, the medical evidence relating to their deaths was presented in the trial by the prosecution. Consequently, the evidence, which was dealt with briefly, was subsumed by the mass of medical evidence presented at the trial as part of the prosecution's case and did not stand out as being particularly significant to the defence case. Therefore, the evidence of their deaths did not hold the emotive power associated with the other victims.

The defence, however, also presented evidence of a number of victims to testify that they were attacked by Fred alone, both before and after he met Rose. Half of these victims were, however, silenced by the judge. They were not given the opportunity to testify; their brief statements were read to the court by defence counsel. Likewise those with evidence relating to the deaths of Rena West and Anne McFall were marginalised in this way. As such, their victim status was denied to them as they were marginalized by the court. Their statements were short and factual and did not hold the emotive power evident in the testimonies of the defence victims.<sup>429</sup>

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<sup>428</sup> Anne McFall lived with Anne Marie, Charmaine, Fred and Rena as a nanny, she later became pregnant by Fred.

<sup>429</sup> In not allowing the victims to testify the defence is disadvantaged as the power of live testimony allows the jury to assess the jury and affects their reaction to the evidence. For example, the evidence of the surviving victims is emotive, the defence victims statements do not therefore hold the equivalent power. See P Rock *'The Social World of an English Crown Court'* Clarendon Press, London (1993), p108.



As a consequence of the apparent success of the prosecution case in undermining Rose's femininity, through the evidence of the surviving victims and the annexation of the evidence of Fred's victims, the defence were unsuccessful in establishing victim status for any of their witnesses. The sheer volume of testimony from the prosecution surviving victims and its emotive power overshadowed any attempt by the prosecution to present her as Fred's victim. The muting of the defence witnesses denied them a status equal to the prosecution witnesses.

### **The Victims and Naming**

Unlike in the trial of Myra Hindley there was no prolific use of naming to provoke an emotive response to the abuse and murder of the victims. During Rose's examination in chief the victims were infrequently addressed because Rose, in many cases, denied having met them and the defence sought to divert attention from them. When they were addressed it was most often by full name (first and surname) or as 'young women'. During her cross-examination most victims were again generally addressed by name, usually full name (ie first and surname). Occasionally however, they were referred to as 'young girls' or 'girls'. This contrasted with the defence's appellation (women or woman) which implied less agency on the part of the victims and emphasised their young age. This countered the theme of victim blaming employed by the defence in their cross-examination of the 'surviving victims'.

Some victims were, however, more likely to elicit an emotive response; those victims known to Rose such as her daughters and Shirley Robinson or those seen to have an implicit emotive effect such as Shirley Robinson's unborn baby. During the cross-examination the baby was named in such a way that it constituted a 'person' and, thus, became yet another victim: The prosecution referred to it as 'Shirley's baby' or 'Shirley's child'. This form of naming has different connotations and effects than, for example, foetus. By referring to the unborn baby as 'baby' or 'child' it was humanised.<sup>430</sup>

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<sup>430</sup> B Danet 'Baby or Foetus: language and the construction of reality in a manslaughter trial' *Semiotica* (1980) 32, 187.



The victims familiar to Rose were more likely to be named in a more familiar manner, using only their first name. Such an appellation reflected and emphasised the relationship which existed between Rose and these victims. One relationship was occasionally further emphasised as the prosecution repeatedly named Heather as ‘your daughter’. This focus on the nature of their relationship was designed to compound the horror of her actions in killing. However, Rose did not object to such an appellation, she seized the identification and used it to defend herself from the accusations, assuming that the fact that the victim was her daughter implicitly indicated her innocence.

### **The Closing Speeches**

The closing speeches of the trial concluded and summarised the evidence and testimonies. As these speeches are not part of the evidence the prosecution have greater latitude and frequently employed rhetorical speech, consequently these speeches were in places emotive. Both the defence and the prosecution used the opportunity afforded to them by the speeches to recap and emphasise the evidence and the narrative format.<sup>431</sup> The speeches, like the cases, were very different in content. Like in the main body of the trial the defence and prosecution presented their different interpretations of the story of the murders. Each story or summary embodied the same themes as the main body of the trial. At the beginning of each speech counsel each attempted to gain the trust and sympathy of the jury so that their particular version would be accepted. Each side did this by speaking in terms of ‘we’ so that the distance between them (counsel and the jury) was reduced and they were seen as fighting for a common cause.<sup>432</sup>

### **The Prosecution**

The prosecution speech addressed each of the themes of the trial, yet the latitude afforded to them in the closing speech and the condensed nature of the evidence in the speech itself meant that the themes were more apparent and, thus, their effect on the jury

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<sup>431</sup> See R DuCann ‘*The Art of the Advocate*’ Harmondsworth, Penguin (1964), Ch 10 and M Stone ‘*Proof of Fact in Criminal Trials*’ W. Green and Son Ltd, Edinburgh (1984), Ch 17.

<sup>432</sup> This tactic involves using inclusive pro-nouns and implies counsel and the jury have a common purpose. W O’Barr ‘*Linguistic Evidence: language, power and strategy in the courtroom*’ Academic Press, New York (1982), p37 .



was inevitably likely to be more substantial. The themes of maternity and sexuality in the construction of Rose again dominated. References to her dearth of maternal feeling were made through the inclusion of numerous quotes that were emphasised frequently through repetition.<sup>433</sup> For example, her reaction to the disappearance of Heather, ‘good bloody riddance’, was repeated three times over three pages. The emphasis of the speech was not on her failure as a mother but her outright abuse of her role as a mother. This was borne out through the evidence of her abuse of her own children and the evidence of those who trusted her as a ‘mother figure’ and were abused.

The construction of Rose’s sexuality also comprised of a review of the evidence, however, the closing speech stated clearly and positively that it was her sexuality which provided the motive for murder, thus explaining their inclusion of the similar fact evidence:

You can have no doubt that sexual gratification ... must have been at the very forefront of what happened to them (the victims).<sup>434</sup>

The speech went on to confirm the construction of her aggressive sexuality and to confirm that sexuality was as important in the motive for her as for Fred:

‘She was as obsessed with sex as he was.’<sup>435</sup>

Their speech concluded that hers was a ...

‘... perverted obsession with sex and violence.’<sup>436</sup>

In this review of her sexuality the prosecution highlighted once again her vacillation between masculine sexual aggression and maternal kindness. The construction of her masculinity was not, however, limited to her sexuality. The prosecution summarised her character in a description that was ill fitting for any feminine women, but more like a description of a man:

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<sup>433</sup> A well known technique of advocacy. See R DuCann *‘The Art of the Advocate’* Harmondsworth, Penguin (1964), Ch 6.

<sup>434</sup> 14/11/95 p3

<sup>435</sup> 14/11/95 p17



‘You assess her. Not without intelligence, tough and resourceful, perfectly prepared to make her point when she wanted.’<sup>437</sup>

‘She has clearly mastered the papers in this case ... and she was keen to argue why she claimed they were wrong.’<sup>438</sup>

This description also indicated the prosecution’s concentration on Rose’s agency and her active role in the abductions, abuse and murders. Both formed themes of the closing speech as the evidence of her involvement was reviewed and the significance of the evidence of her sexuality explained. Agency, however, received particular attention and Rose was transformed from the passive follower to the ‘strategist’:

‘... you may think that she was the strategist.’<sup>439</sup>

‘Might it all be done with the sharp Rose West, the one who at fifteen had been planning the strategy in relation to the girls in care, being wholly in ignorance?’<sup>440</sup>

In fact her claim of ignorance and passivity was ridiculed as she was described as ‘the three brass monkeys’.<sup>441</sup>

The key then to the prosecution case, as evident in the closing speech, was the relationship between Fred and Rose and the equal basis on which they operated:

‘At the core of this case is the relationship between Fred and Rose West; what they knew about each other, what they did to others and how far each was prepared to go.’<sup>442</sup>

For the prosecution this indicated that:

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<sup>436</sup> 14/11/95 p137

<sup>437</sup> 14/11/95 p8

<sup>438</sup> 14 11/95 p10

<sup>439</sup> 14 11/95 p15

<sup>440</sup> 14/11/95 p91

<sup>441</sup> 14/11/95 p136

<sup>442</sup> 14/11/95 p6



‘Fred and Rose were perfect companions and they were in it together.’<sup>443</sup>

However, Rose’s involvement was rendered worse through the speech as the prosecution not only hinted at her dominance through references to her being the strategist but also constructed her as deceitful having woven a ‘web of deceit’. This contrasts with their construction of Fred who was devoted to Rose and who confessed and died in order to protect her.

The victims naturally featured heavily in the prosecution’s closing speech. The pattern of their construction mirrored that of the testimonies. During the first few pages of the speech their suffering is emphasised:

‘... the bodies of these ten girls ... were mutilated and deliberately mutilated for reasons we can scarcely imagine ... Imagine the scene, the mess ...’<sup>444</sup>

‘they obviously had to be conscious, albeit helpless. They had to be bound, they had to be gagged, they had to be taken some place where they could be abused at leisure.’<sup>445</sup>

The bulk of the speech concentrated again on their reification both before and after death as their lives and the manner of their deaths were described.

Unlike the testimonies, the closing speech mixed together the construction of Rose and the victims and revealed a woman who abused or denied all sense of femininity and murdered young women, who were by this time almost known to those in the courtroom, in a grotesque and cruel manner.

### **The Defence**

The approach of the defence in their closing speech was to appeal to the jury, whilst sympathising with their task,<sup>446</sup> to look through the prejudice excited by the evidence

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<sup>443</sup> 14/11/95 p137

<sup>444</sup> 14/11/95 p1

<sup>445</sup> 14/11/95 p3

<sup>446</sup> Here, the defence are seeking to ally themselves with the jury. R DuCann *‘The Art of the Advocate’*



and to seek the truth:

‘This has been for you as for all of us a demanding and at times a harrowing experience, and the responsibility which rests upon your shoulders is immense.’<sup>447</sup>

‘(There is a) siren of voices urging you to convict because Rose West is an evil woman.’<sup>448</sup>

Indeed there was some concession in the closing speech that Rose was not all a woman should be:

‘You may have come to the conclusion that as a mother and as a woman her conduct fell far below that which you would expect.’<sup>449</sup>

This was perhaps necessary given the effect on the jury of the evidence produced by the prosecution but what the defence insisted upon was that this was not evidence of murder. Nor were the lies which she, they admit, has occasionally told. These lies were explained within the confines of femininity; through the emotions of fear and shame.

Because of the importance of the themes of femininity in the construction of credible stories the defence persisted with the construction of Rose as feminine through the discourse of femininity whilst concurrently conceding some impropriety on her part. Her impropriety was explained and mitigated as the theme of her victimisation, which had until this point only formed a minimal part of the case, crystallised:

‘Rose West ... is a woman who herself has suffered. Raped as a teenager; abandoned by her mother; exploited and humiliated by her husband.’<sup>450</sup>

‘She was a mother of five before she was twenty five, she clung to Fred West ... because he was the family and the only family which she had.’<sup>451</sup>

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Harmonsworth, Penguin (1964). p202.

<sup>447</sup> 15/11/95 p67

<sup>448</sup> 15/11/95 p67

<sup>449</sup> 15/11/95 p2

<sup>450</sup> 15/11/95 p26



‘She had put up with the lodgers, prostitution, photographs, videos, spy holes. She had tried in her own way to keep her family in tact ...’<sup>452</sup>

‘... bear in mind that when you have been buffeted by life in the way she has been buffeted by life you are apt to lose your appeal.’<sup>453</sup>

Thus Rose was constructed as a victim. This was key, not only in the construction of her passivity, but also in supporting the contention of her innocence and non-involvement. All of these themes were borne out in the construction of her sexuality. This discourse, which provided the linchpin of the prosecution case, was accepted to some degree by the defence but reconstructed during their closing speech to support their portrayal Rose’s lack of agency and activity:

‘Is it not possible that ... he was the one with the developed taste in pornography and sexual deviation? Is it not possible that she was the young wife trying to impress, no doubt, her older husband?’<sup>454</sup>

‘... Fred West was an evil, corrupt, sex maniac who was able to follow his career of sexual aggression without any need of assistance from this defendant. He did it before her, he was more than capable of doing it after her arrival on the scene and more than capable of doing it without her knowledge or participation.’<sup>455</sup>

Her lesbian sexuality was also transformed, into a haven from her exploited sexuality:

‘Who are we to judge and to say that she was wrong if out of the harshness which was her life she turned to someone else for love and warmth and affection?’<sup>456</sup>

The tactic of twisting and reconstructing the prosecution portrayals was also evident in the defence’s construction of Fred and the surviving victims.<sup>457</sup> The evidence of the

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<sup>451</sup> 15/11/95 p26

<sup>452</sup> 15/11/95 p26

<sup>453</sup> 15/11/95 p29

<sup>454</sup> 15/11/95 p23

<sup>455</sup> 15/11/95 p24

<sup>456</sup> 15/11/95 p30

<sup>457</sup> These victims are subject to the same construction as in the rest of the defence case. Their



prosecution witnesses was again, as in their cross-examinations, dealt with through the accusation that they were lying. The theme of lying, however, appeared in the closing speech not merely as 'lying' but as 'female deviousness':

'She stood there, sat there, looked over at you, appeared to be under great pressure, unhappy, the epitome of as I say of a woman who was frank and honest and telling it from the heart ... she was in fact deceiving you.'<sup>458</sup>

'... no witness is incapable of lies or exaggeration or deceit.'<sup>459</sup>

Fred, who hardly featured in the prosecution closing speech, was the subject of much greater attention by the defence. The chivalrous construction of his suicide, as portrayed by the prosecution, was overshadowed by the alternative construction by the defence. He was constructed as a coward.

'Fred West was not the stuff of which martyrs are made ... the argument that Fred West ... would give up his life ... in order to protect someone else and look after his family is an insult to your intelligence.'<sup>460</sup>

He was an evil and vicious man:

'... a man who either colluded in his wife's prostitution, who raped and sexually abused his own daughter could scarcely be expected to turn around than and make this grand gesture.'<sup>461</sup>

'... a depraved and morally bankrupt human being. If you can honour him with the title human being.'<sup>462</sup>

Such a construction is hardly surprising given that it was the contention of the defence that Fred was solely responsible for the murders.

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victimisation is minimised and they are accused of exaggeration and fabrication.

<sup>458</sup> 15/11/95 p9

<sup>459</sup> 15/11/95 p9

<sup>460</sup> 15/11/95 p5

<sup>461</sup> 15/11/95 p6



## **Conclusion**

The themes identified in the trial are themes rooted in gendered understandings of women. Their prominence is explicable as the construction of Rose was crucial to the acceptance of the stories which the defence and prosecution suggested. The themes were raised initially by the prosecution, the defence claimed, in order to bridge the gap in the evidence connecting Rose to the killings. This claim was not so far from the truth. The prosecution case was indeed based on the assumption that Rose's cruelty to her children and other young women/children combined with evidence of her sexuality implied her involvement in the murders.

Thus, the constructions of her maternity and sexuality, and the themes of activity, agency or passivity, played a pivotal role in the trial. For the prosecution, Rose's twisted exploitation of her status as a woman and a mother and her deviant, aggressive and violent sexuality portrayed to the jury a woman who, contrary to traditional understandings of femininity, was capable of the crimes of which she was accused. In fact, she had ceased to be a woman at all.

The defence and Rose herself through her testimony, naturally attempted to counter this portrayal. Whilst conceding that Rose was not an ideal example of 'woman' they employed the feminine discourses of passivity and subordination/victimisation to explain and excuse her conduct. It was maternity, however, which provided Rose's greatest defence as it explained two of the puzzling elements of their case; her ignorance and why she stayed with Fred. Perhaps it was because of the defence's reliance on maternity, despite the overwhelming nature of the evidence against her feminine maternity, that the defence case failed.



**Summing Up In The Trials of Myra Hindley**  
**and Rose West**

Judges' tendency to arrive at a decision and then to rationalise that decision, manipulating the facts and precedent to fit the desired outcome, has been observed at the level of the upper courts.<sup>1</sup> This judicial approach to the facts may also, however, be observed at trials of first instance. Here, however, unlike in the appeal courts, judges are not decision-makers. The jury, under the guidance of the judge renders the verdict. The judge, it is contended, does nonetheless play a substantial role in shaping that decision through the summing up. So much so, that it has been argued the summing up forms a third, largely unacknowledged, limb of advocacy.<sup>2</sup> Within the context of the trial, however, the summing up is a discourse that is unlike those that have preceded it (during the main body of the trial). It holds a special status as a consequence of a number of different factors. As such, the summing up can play a crucial role in the jury's decision-making.

A considerable amount of research has been conducted to attempt to understand how and why juries reach the decisions they do. This research has provided an insight into the decision-making process. However, such research has been severely limited by the rules that protect the jury from public and indeed academic view. Studies have, therefore, been conducted using mock juries and trials and observing the decision-making process. The limitations attached to this approach are profuse. For example, the reality and atmosphere of the courtroom cannot be recreated in what are laboratory conditions and no consequences are attached to the decisions that mock juries make.<sup>3</sup> Whilst the limitations of this method are widely acknowledged, such research does serve to cast light on an otherwise invisible process. Many of these studies have

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<sup>1</sup> See J Frank *'Law and the Modern Mind'* New York Stevens (1949), chapter 12, D. Nicholson 'Telling Tales: Gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2, 185, L Bibbings *'Boys Will Be Boys: Masculinity and offences against the person'* In D Nicholson and L Bibbings *'Feminist Perspectives on Criminal Law'* Cavendish Publishing Ltd: London and Sydney (2000).

<sup>2</sup> P Robertshaw 'The Catalyst of liberal reform: the risks of puncture repair at speed' *International Journal for the Semiotics of Law* Vol 10 No 28 (1997), p80.



confirmed the suggestion that the role of the judge and the summing up are sometimes crucial in shaping jury decisions. For example, research by Mungham and Bankowski found that 'difficult cases' were identified by jurors as those in which it was not clear from the summing up what the outcome should be.<sup>4</sup>

However, it is necessary to attempt to explain why the judge and jury relationship may give rise to this phenomena and to address other factors that may exacerbate or curtail the high level of judicial influence. Undoubtedly, much of the power of the summing up originates from the relative status of judge and jury and the power invested in the speech as a consequence.

### **The Jury**

The jury suffers a number of 'disadvantages' that render them almost wholly dependent on the legal personnel who surround them. These disadvantages can be understood by looking at the context of decision-making; that is the courtroom environment as experienced by the jury.<sup>5</sup> The jury's greatest disadvantage is their inexperience of the court system, and thus the alien environment they find themselves in as a consequence of their status.<sup>6</sup> Not only is the physical environment alien and intimidating but also, the jury find themselves extracted from their everyday roles and behaviour. Throughout the trial the jury members are disempowered, they are inert, unable to speak or act as the process that unfolds before them. They are merely recipients of information, unable to engage with or exert control over the information they receive.<sup>7</sup> The language used in conveying the information and instructions accompanying it compounds this experience. Legal language is a foreign and esoteric language to jurors and unsurprisingly the combination of abstruse vocabulary and complex syntax confuses them.<sup>8</sup> Further, the mechanics of the court render them child-like as they are ushered

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<sup>3</sup> The LSE Project 'Juries and the Rules of Evidence' *Crim LR* (1973) 221, also see J Baldwin and M McConville *Jury Trials* Clarendon Press: Oxford (1979).

<sup>4</sup> G Mungham and Z Bankowski *The Jury in the Legal System* in P Carlen (Ed) *The Sociology of Law* University of Keele, Keele (1976), p212.

<sup>5</sup> Ibid. p207.

<sup>6</sup> P Robertshaw *Summary Justice: judges address juries* Cassel: London and Washington (1998) p14

<sup>7</sup> Ibid. p15.

<sup>8</sup> W O'Barr *Linguistic Evidence: language, power and strategy in the courtroom* Academic Press New York (1982), p27.



from place to place by officials.<sup>9</sup> Thus, the court and trial processes come together to disorientate the jury, to pacify them and create an environment in which they are powerless and dependent on the court personnel.

### **The Judge**

In contrast to the powerlessness of the recipients of the summing up, the jury, the most powerful member of the court, the judge, conducts the speech. The judge's authority is clearly evident to the jury, not least, through the legend of judicial wisdom. The spatial organisation of the courtroom confirms the judge's superiority. She or he is physically separated from the rest of the court, is elevated and literally enthroned.<sup>10</sup> This elevated position communicates to those attending the court the judge's authority and places her/him in a position where he or she can maintain full control of the proceedings.<sup>11</sup> The mode in which the judge is addressed bolsters the physically apparent superiority. The judge is addressed with deference and never by name, for example as 'the court', 'your honour' or 'the bench'. This appellation not only communicates reverence, but also depersonalises the judge transforming her or him into the embodiment of 'law and justice'.<sup>12</sup>

This status means that the words spoken by the judge will receive special attention from observers and listeners, particularly those who are lost and confused by the courtroom and the legal process.<sup>13</sup> The jury, who have been rendered passive by the court process, are, at the end of the trial, suddenly thrown into action and asked to deliver a verdict; thus they are pushed from the margins of the trial to its centre. To compound this move from passivity to activity and empowerment most jurors are unused to making such important decisions and will be aware of the harshness of the consequences of a finding of guilt. In these circumstances then it is unsurprising that they turn to the judge (in the

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<sup>9</sup> T Sargant and P Hill '*Criminal Trials: the search for truth*' Fabian Research Series No 348 Oct 1986. P Robertshaw '*Summary Justice; Judges address juries*' Cassel: London and Washington (1998) p12.

<sup>10</sup> P Goodrich '*Languages of Law: from logics of memory to nomadic masks*' Weidenfeld and Nicolson: London (1990), p192, P Rock '*The Social World of an English Crown Court*' Clarendon Press, Oxford (1993), p182.

<sup>11</sup> P Rock '*The Social World of an English Crown Court*' Clarendon Press, Oxford (1993), p238.

<sup>12</sup> P Goodrich '*Languages of Law: from logics of memory to nomadic masks*' Weidenfeld and Nicolson: London (1990), p191.

<sup>13</sup> Robertshaw identifies this mode of empowered argument as 'ethos'. See '*Summary Justice: judges address juries*' Cassel: London and Washington (1998), Ch 1.



form of the summing up) for guidance: ‘the jury, desperate for portents to let them do the right thing (whatever that might be) looked at him (the judge).’<sup>14</sup> The judge, it has been observed, is known to use her or his authority to influence the jury during the summing up. For example, the judge of the trial of the Birmingham Six was described as having ‘brought all his authority to bear upon the jury’.<sup>15</sup> Consequently, it has been observed that: ‘... Judges often exert a strong influence on the outcome and are far from being the passive impartial referee as depicted in adversarial theory.’<sup>16</sup>

It should be noted that in the United States the judge is not allowed to comment on the evidence as the English judge is. It is argued that to allow such input would be a breach of the requirement of due process. American research has indicated that despite these very strict rules, judicial opinion can be gauged through other mediums; for example, facial expression or tone of voice, and that these indicators can effect jury decision-making.<sup>17</sup> If this is the case, the authority brought to bear by the English judge during the summing up, which provides the finale to the trial,<sup>18</sup> must undeniably effect the outcome of the trial.

### **The Summing Up: a powerful discourse**

‘[the judge’s summing up] from an independent standpoint summarises the case, explains the legal issues in contention and may comment on factors which lend weight to or cast doubt on certain evidence.’<sup>19</sup>

The above quotation suggests an idealised notion of the summing up in an English crown court. In reality the summing up is far from an independent summary of the evidence. The law regulating judicial summing up allows it to embody and elucidate the judge’s opinion. The breadth of manoeuvre allowed by the law enables the judge,

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<sup>14</sup> L Kennedy ‘*The Trial of Stephen Ward*’ Victor Gollanz Ltd: London (1964) p218.

<sup>15</sup> C Walker and K Starmer ‘*Miscarriages of Justice: a review of justice in error*’ Blackstone Press Ltd 1999, p226.

<sup>16</sup> A Sanders and R Young ‘*Criminal Justice*’ Butterworths (2000), p552.

<sup>17</sup> D Blanck, R Rosenthal and La Doris Hazzard Cordell ‘The Appearance of Justice: judges’ verbal and non-verbal behaviour in criminal jury trials’ *Stanford Law Review* Vol 38: 89, Sept 1985.

<sup>18</sup> P Robertshaw ‘*Summary Justice: judges address juries*’ Cassel: London and Washington (1998), p19.

<sup>19</sup> R White ‘*The Administration of Justice*’ Basil Blackwell: New York (1985) p85.



through the summing up, to heavily influence the jury's decision.<sup>20</sup> It is apparent that this discretionary approach to the summing up, which allows heavily weighted discourse, has given rise to famous miscarriages of justice.<sup>21</sup> As Sargant and Hill have argued 'One of the most powerful agents of injustice is the judge's summing up',<sup>22</sup>

Lord Hailsham in R v Lawrence outlined the elements a summing up should include: a circular tour around the area of law effected by the case; references to the burden and standard of proof; an explanation of the respective roles of judge and jury; a succinct summary of the facts required to reach a decision; a summary of the evidence; and a statement of inferences the jury are entitled to draw.<sup>23</sup> Beyond this guidance, the law demands that the summing up be structured around a sparse framework of guidelines that primarily require the separation of the jury as the trier of facts<sup>24</sup> from the judge as the advisor on the law to be clearly stated in the speech. However, it has been noted that the law/facts distinction is itself questionable: 'The distinction between law and the facts is notoriously fluid and is often exploited by the judiciary',<sup>25</sup> In addition to the law/facts rule the summing up must be 'fair'. Fairness relates predominantly to the requirement that the review of the evidence be balanced.<sup>26</sup>

However, provided that the separation of the roles of judge and jury are elucidated in the speech, the judge is actually allowed to comment on the evidence. As long as the judge clearly articulates this 'disclaimer', she/he may comment strongly on the facts,<sup>27</sup> on the evidence that falls outside of the arguments of the defence and prosecution,<sup>28</sup> on the reliability of the evidence as long as it is grounded in fact<sup>29</sup> and on the strength of the defence or prosecution cases.<sup>30</sup> The judge can even suggest an appropriate verdict:

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<sup>20</sup> S Purves and R McCabe found that the lean of the summing up does effect trial outcome. '*The Shadow Jury at Work*' Oxford University Penal Research Unit, Basil Blackwell (1974).

<sup>21</sup> Eg the trial of the Birmingham Six A Sanders and R Young '*Criminal Justice*' Butterworths: London (2000), p575.

<sup>22</sup> T Sargant and P Hill '*Criminal Trials: the search for truth*' Fabian Research Series No 348, Oct 1986, p12.

<sup>23</sup> (1982) AC 510, 519, HL.

<sup>24</sup> Broadhursts v R (1964) AC, 457. Furthermore, Mitchell (1960) Crim LR 211, R v Middlesex JJ ex parte DPP (1952) 2 QB 758, Beeby (1911) 6 Cr App R 138 all ruled that the comments can be made by the judge in forceful terms provided the role of the jury as trier of facts is not usurped.

<sup>25</sup> M Findlay and P Duff '*The Jury Under Attack*' Butterworths: London (1988), p130.

<sup>26</sup> R v Mills (1936) 25 Cr App R 138.

<sup>27</sup> R v Cohen 2 Cr App R (1909) 197.

<sup>28</sup> R v Evans 91 Cr App R (1992) 173 CA.

<sup>29</sup> Cooke (1986) 84 Cr App R 286.

<sup>30</sup> Coulter v R (1926) 29 WALR, 40.



‘In an appropriate case ... the judge may sum up in such a way as to make it plain that he considers the accused is guilty and should be convicted.’<sup>31</sup> This judicial discretion appears to be regulated by the requirement that the summing up be ‘fair’. This requires the review of the evidence be balanced.<sup>32</sup> However whilst her or his review of the evidence may be balanced, comment need not be, provided the disclaimer is present.

Furthermore, the review of the evidence may be unbalanced in a way not evident in the text alone. For example, the leaning of the judge may be evident from the tone of his or her voice. An observer of the trial of Stephen Ward commented:

‘It was not that the judge had omitted what was favourable to Ward ... It was, simply, a question of emphasis. When the judge was pointing out these things in Ward’s favour, he often did so in a flat, matter of fact voice. He appeared so uninterested in what he was saying that one could not be interested oneself: the mind automatically shut off from him. Yet when he came to matters that told against Ward his tone changed: his voice and bearing became brighter, livelier: he held the attention where elsewhere he had lost it.’<sup>33</sup>

However far this behaviour contradicted the rhetoric of the law, that is that the judge is as impartial arbiter, it was consistent with the legal rules. Thus, Robertshaw, for example, argues that the disclaimer is largely ineffectual in ‘neutralising’ the effect of the judge’s comment on the jury, but functions merely as a rhetorical tool.<sup>34</sup>

As a consequence of the latitude allowed by these rules, successful appeals on the basis of unfair summings up are rare. Convictions that have been quashed on the basis of summings up have been examples of rare and extreme imbalance. For example, in R v Spencer<sup>35</sup> the summing up was criticised for being unbalanced (focusing only on the peripheral elements of the defence case) and comments were identified as ‘one-way’, in favour of the prosecution and damaging to the defence. Whilst this conviction was

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<sup>31</sup> L Salmon DPP v Stonehouse (1978) AC 55 pp80. If the judge believes the defendant should be acquitted, he/she may, of course, order or direct the jury to do so.

<sup>32</sup> R v Mills (1936) 25 Cr App R 138.

<sup>33</sup> L Kennedy ‘*The Trial of Stephen Ward*’ London, Victor Gollanz Ltd (1964 p 220, also see D Blanck, R Rosenthal and La Doris Hazzard Cordell ‘The Appearance of Justice: judges’ verbal and non-verbal behaviour in criminal jury trials’ Stanford Law Review Vol 38: 89, Sept 1985

<sup>34</sup> P Robertshaw ‘*Summary Justice: judges address juries*’ Cassel: London and Washington (1998). p25.

<sup>35</sup> The Times 13<sup>th</sup> July (1994)



quashed on the basis of the summing up, many other cases illustrating extreme bias have not been. For, as Lord Lowry said, “all that is required is a general *impression* of fairness”<sup>36</sup> (Italics supplied). Even this standard is not applied stringently. In one case, for example, a judge<sup>37</sup> sighed and muttered ‘Oh God’ throughout the defence’s closing speech. The defence’s appeal was refused on the basis that his behaviour did not reflect any view of the defence case, but was just an implicit criticism of the conduct of defence counsel. Thus it appears that, whilst the law regulating the summing up does provide some guiding and limiting framework, it also allows great latitude to the judge. Strong comment can be made provided that the disclaimer is also present and the review of the evidence is balanced. Although legal rhetoric represents the judge as independent arbiter, s/he is legally entitled to step into the fray.

The differing status of the judge and jury (and the dependence this and other features of the trial process give rise to in the jury) and the latitude allowed to the judge by the law regulating the content of the summing up, are perhaps some of the most powerful, and yet most academically neglected, elements of the trial. The summing up brings together and mediates all the narratives that have been played out in the trial. The resulting discourse can be selective and heavily weighted in favour of one side or the other. Research has shown that there is a strong correlation between the tendency of the summing up and the trial outcome.<sup>38</sup> What is more, the inclusion of comment is clearly intended to influence the jury or else there would be no point in including it. Thus, it is argued, that the degree of judicial intervention that is allowed in the summing up ‘introduces into trials the very problem that the use of juries is meant to avoid – prejudice’.<sup>39</sup>

It is frequently the case however that the bias, leaning or weighting of a summing up is not immediately evident, but is hidden in, for example, the sequencing of the speech.<sup>40</sup> In such cases the direction or tendency of the summing up can be elicited and identified through textual analysis. This chapter examines the summings up in the trials of Rose

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<sup>36</sup> Quoted by Lord Morris of Borth-y-Gest in *McGreevy*, 57 Cr.App.R 424 at 430

<sup>37</sup> *Hircock* (1969), 1 All ER 47.

<sup>38</sup> M Zander and P Henderson ‘*Crown Court Study*’ Research Study No 19, The Royal Commission on Criminal Justice, London, HMSO (1993) Ch 8, also see G Mungham and Z Bankowski ‘*The Jury in the Legal System*’ in P Carlen (Ed) ‘*The Sociology of Law*’ University of Keele, Keele (1976).

<sup>39</sup> A Sanders and R Young ‘*Criminal Justice*’ Butterworths: London (2000). p577.

<sup>40</sup> P Robertshaw ‘*Summary Justice: judges address juries*’ Cassel: London and Washington (1998), p16



West and Myra Hindley and seeks to identify patterns, emphasis or weight that may have influenced the jury.

### **The Trials of Myra Hindley and Rose West**

The approaches in the summings up of the trials of Rose West and Myra Hindley confirm and expound the basic underlying differences in the main body of each trial; that the case against Myra was strongly supported by the evidence and that the case against Rose was evidentially weak. It is argued that although each judge makes clear his belief in the guilt of each woman, the differing levels of proof in the trials resulted in the adoption of very different modes to communication this. The approach of each judge seems to incorporate the methods deemed *necessary* to achieve a conviction. This is evident both structurally and in terms of the inclusion and exploitation of gendered stereotypes in the speeches. Thus, whereas in the summing up of Myra's trial there was little use of emotive, gender based tools, the focus being predominantly on the stronger available evidence. In contrast, the summing up of Rose's trial incorporated the emotive, gender and victim based discourse employed by the prosecution. Thus, the differences in the summing up reflect the differences between the trials: the differing strength of evidence and the differing degrees of awareness and use of gender roles. However, through his summation the judge in Rose's case explicitly endorses and strengthens the prosecution case.

### **Structure and Weighting in the Summing Up**

Two very distinct structures are evident in the summings up of the two trials in question. Like the use of gendered stereotypes, which is explored below, the structure of the trials differed as a consequence of the differing levels of available evidence and the desire to secure a conviction. Robertshaw argues that the summing up is designed or constructed by the judge as a map; by identifying the starting point the judge can plan how the argument can be structured so that it leads to the desired conclusion.<sup>41</sup> In

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<sup>41</sup> Ibid. Ch1



Myra's trial the strength of the evidence meant that the task of the judge in supporting the prosecution case through the summing up was straight-forward, and, thus, so was the structure of the speech, providing merely a review of the evidence. In Rose's trial, however, the evidence was weaker and, thus, the judge structured the speech in a way that strengthened the prosecution case and led to the conclusion of guilt.

### **Myra Hindley**

In his summation of Ian and Myra's trial the judge presented four alternate versions of events, reflecting the stories/narratives presented in the trial. Consequently, each argument was given an equal and fair hearing and the speech was balanced. The speech was divided therefore into five sections: an introduction, dealing with the relevant law, a summary of the prosecution case excluding the evidence of the main prosecution witness, David Smith,<sup>42</sup> a summary of the prosecution case including the evidence of David,<sup>43</sup> a summary of Ian's defence/evidence<sup>44</sup> and a summary of Myra's defence/evidence.<sup>45</sup> As a consequence of this structure, each perspective was heard in isolation as far as is practicable, although there was inevitably some overlap.

However, despite this apparent fairness the structure was in many ways condemnatory of the accused. For example, his reason for dividing the prosecution evidence was to combat the defence's criticisms of the weakness of a prosecution case based on the unreliable evidence given by David:

‘Mr Hooson<sup>46</sup> has told you again and again that the prosecution case is founded upon Smith, and that a case founded upon Smith can be likened to a house built upon sand. Is he closing his eyes to the situation?’<sup>47</sup>

The use of rhetorical questions communicated the judge's own view and cast doubt on the defence case.<sup>48</sup> By dividing the evidence the judge illustrated that the prosecution's

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<sup>42</sup> David Smith was Myra Hindley's brother-in-law. He was present for the final murder, that of Edward Evans, and reported it to the police. This section of the summation covered 24 pages.

<sup>43</sup> 11 pages.

<sup>44</sup> 23 pages.

<sup>45</sup> 9 pages.

<sup>46</sup> Counsel for the defence.

<sup>47</sup> p122

<sup>48</sup> P Robertshaw *'Summary Justice; Judges address juries'* Cassel: London and Washington (1998) p137.



case was not wholly dependent on David. In addition, he seemed not to reject David's evidence out of hand, but seemed to suggest that he was a credible witness:

'He did not make any pretence about his approach to life ... he had heard these views expressed by these two persons in the dock.'<sup>49</sup>

'I do not think it is really suggested that the substance of his evidence has been substantially effected by this quite extraordinary arrangement he had with this newspaper.'<sup>50</sup>

'Whatever else might be said against Smith and about him being unprincipled, he was certainly the one who went to the police at ten past six that morning.'<sup>51</sup>

'But Smith was the one who went to the police about Evans ...'<sup>52</sup>

Further, clear distinction was drawn by the judge between David and the accused:

'Smith is being attacked for his taste in pornography, but what do you think of a man ten years his senior and a woman of twenty two, who take photographs like that of a little girl.'<sup>53</sup>

The judge's distinction between the prosecution and defence cases was also evident in the way in which the testimonial evidence was presented. David's evidence was repeated word for word by the judge. As such it appeared as a flowing narrative. Furthermore, the judge's introduction to it was as an introduction to a story based on facts:

'Then we come to the Saturday the 25<sup>th</sup> September. That is the fortnight before Evan was killed.'<sup>54</sup>

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<sup>49</sup> p123

<sup>50</sup> p125

<sup>51</sup> p137

<sup>52</sup> p118

<sup>53</sup> p111

<sup>54</sup> p126



‘Then we come to the actual night of the killing.’<sup>55</sup>

His recounting of Ian and Myra’s testimonies reflected a level of questioning or disbelief that was not present in relation to David. Their evidence, by contrast, read like a report with no introduction and typically beginning with the phrases ‘It is said that...’ or ‘S/he said...’, thus also indicating their unreliability. Unlike the free-flowing testimony of David, Myra and Ian’s evidence was broken up with commentary, rhetorical questions, failures of the defence counsel and hints as to lies told. Thus, whilst the speech as whole did not read as a complete narrative, sections relating to the prosecution were presented as narrative. Consequently, the prosecution’s evidence, as presented in the summing up, was likely to be more readily comprehended and believed by the jury.<sup>56</sup>

A second consequence of the adopted structure of the summing up was that the evidence against Ian inevitably tainted Myra’s case. This despite the judge’s warnings against allowing the evidence to become mixed:

‘There is so much evidence in this case which is evidence against Brady which is not evidence against her ... although they necessarily overlap at some points.’<sup>57</sup>

Nonetheless, there was a clear attempt by the judge to separate the evidence and to give each case a proportionate time in the summation.

In spite of the apparently fair and even structure of the speech it was weighted toward supporting the prosecution case. It was, for example, evident from the judge’s introduction what his opinion of the evidence was. Only two paragraphs into the summing up he adopted the phrase ‘moors murders’. This alone indicates that, in spite of his subsequent discussion of how the jury might, having heard the speech, decide to connect the murders, he had adopted the commonly held view that they were in fact connected. It was also in this introductory section that he warned the jury of the

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<sup>55</sup> p132

<sup>56</sup> Bennett and Feldman *‘Reconstructing Reality in the Courtroom’* Tavistock Publications, London (1981).

<sup>57</sup> p99



consequences of disagreeing with that conclusion and thus pressured them into agreeing on a verdict:<sup>58</sup>

‘If ... you are unable to agree ... you must come back and say so and then you are discharged, but you appreciate what this means? It means that this whole dreadful case will have to be gone over all over again ... and that is something we would all greatly wish to avoid ... I am sure you will all do your utmost to arrive at an agreement one way or the other.’<sup>59</sup>

And expressed his horror at the conduct of the accused:

‘If the prosecution is right, you are dealing with two sadistic killers of the utmost depravity.’<sup>60</sup>

‘Could anyone be as wicked as that? That is what the prosecution is setting out to prove.’<sup>61</sup>

‘... this truly horrible case ...’<sup>62</sup>

‘... the first reaction of kindly and charitable people is to say ‘that is terrible, anyone doing anything like that must be insane ...’<sup>63</sup>

The main body of the speech which followed was accompanied by a commentary which underlined his position. The judge’s discussion and comment, which accompany the summary of the defence evidence, fortified the prosecution position. The rhetorical questions and comment produced a *fait accompli*:

‘Do you take an intended (robbery) victim into the living room of your house where he can bring the police within five minutes? How was Evans going to

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<sup>58</sup> This contrasts with Lees’ finding in rape trials that the problems and dangers associated with re-trials are rarely explained to jurors, perhaps because judges’ tendency in rape trials is toward acquittal. See *‘Ruling Passions: sexual violence, reputation and the law’* Buckingham, OUP (1997), Ch 3.

<sup>59</sup> p83

<sup>60</sup> p98

<sup>61</sup> p98

<sup>62</sup> p97

<sup>63</sup> p97



get back? ... How did it happen that there was a hatchet lying by the fireplace?

Why were there pools of blood on the floor but not on the rugs?’<sup>64</sup>

The inevitable conclusion was that Evans was not merely the victim of a robbery that went wrong, as contended by the defence, but of premeditated murder. During this accompanying commentary the judge was critical of the accused, especially Ian:

‘At the time I think Mr Hooson was claiming some sort of virtue in how frank Brady had been about these photographs, but in the face of those photographs perhaps there was not much point in denial.’<sup>65</sup>

‘Mr Hooson had attacked Smith because at 17 he liked reading sexy books. I thought he had forgotten his own client’s taste ...’<sup>66</sup>

And was at times dismissive of the evidence:

‘... she was very embarrassed with her back turned, *and all the rest of it.*’<sup>67</sup>

‘... and he was refused access to his solicitor *and so on.*’<sup>68</sup>

[My italics]

His different treatment of the defence testimonies is confirmed by an analysis of naming which reveals that it was during his summary of these testimonies he was most likely to refer to the accused as either ‘Myra’ or ‘Ian’ thus reducing their perceived credibility.<sup>69</sup>

There was not, therefore, a heavy reliance on structure in the summation in order to secure a guilty verdict (as was evident in the Rose West summing up, below). The

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<sup>64</sup> p145

<sup>65</sup> p110

<sup>66</sup> p110

<sup>67</sup> p151

<sup>68</sup> p154

<sup>69</sup> During his summary of the prosecution evidence the judge is most likely to refer to Myra and Ian using formal appellations, ‘Miss Hindley’ and ‘Brady’, using ‘Myra’ and ‘Ian’ only seven times and once respectively. By contrast during his review of the defence case the judge is most likely to name Myra as ‘Myra’. Although Ian continues to be named predominantly as ‘Brady’ during the summation of the defence evidence he is named as ‘Ian’ more frequently than in the summary of the prosecution case (25 times).



judge's focus was on the evidence. However, the manner in which the evidence was presented and the comment and commentary that accompanied it did betray his belief in guilt and shored up the prosecution case. The introduction, which outlined the intended structure and explained this approach, provides a strong indication of the tone of the speech, that is as structurally balanced but heavily weighted in terms of comments made which emphasised the prosecution version.

### **Rose West**

The summing up in the trial of Rose was strikingly different to that in Myra's trial. The review of evidence was structurally unbalanced. The speech was structured as one long narrative or story, which arranged all the events raised in the trial into chronological order. In adopting this approach the judge took the prosecution story/narrative and slotted the defence evidence within the framework provided by the prosecution. Thus, the prosecution version formed the skeleton for the judicial speech and the defence version of events was minimised. Unlike the summing up in Myra's trial, therefore, the defence evidence did not receive separate attention. The judge, however, stayed within the legal framework that governs the summing up. Although the defence case was marginalised, it was not omitted and the summing up was therefore legally sound. Whilst the summing up must look balanced, in that it takes into account both cases (Perera (1985)<sup>16</sup> A Crim R 292 (Qld CCA)), it need not address every point of the defence case, or stick to the structure presented by defence counsel (R v Goodway 98 Cr App R (1994) 11,14,CA).

As a consequence of the use of the prosecution case as the framework for the speech, the prosecution case was implicitly accepted and confirmed, whereas the defence case was presented in a form that ensured it did not challenge the prosecution's version, but rather became a part of it. Consequently what were two different cases pitched against each other in the adversarial system became one story structured in line with the prosecution narrative. Thus, the structure of the speech had a neutralising effect. The summing up re-constituted the defence evidence in such a way that it then failed to challenge the validity of the prosecution case. For example, the defence evidence submitted to illustrate that Fred could and in fact did operate alone became merely part of the wider picture presented by the judge. Instead of being evidence that Fred acted



alone and did not need or in fact rely upon Rose, the testimony of defence witnesses was interpreted merely as evidence that Fred *also* acted alone. Thus the construction of Rose's active role was confirmed whereas the construction of her passivity or innocence was excluded and denied.

Furthermore, within the adopted structure the defence evidence appeared in short passages sandwiched between prosecution evidence, cross-examinations or re-examinations. This is particularly important and evident in relation to testimonies of Fred's lone attacks or murders. This evidence was minimised, covering only approximately 7.5 pages out of almost 300, and was put into the judge's own, often critical, words. In contrast the prosecution testimonies were recited verbatim. Other defence evidence regarding Fred's capacity to act alone (taped police interviews) was dealt with in a similar way. The summing up tackled these in only two and a half pages, accompanying the evidence with critical commentary. The prosecution rebuttal evidence (the testimony of Janet Leech)<sup>70</sup> in contrast, covered five pages. In spite of the danger highlighted by the defence's cross-examination of her (which revealed that she lied under oath, and was therefore untrustworthy) the judge spent considerable time reviewing her evidence. In particular he highlighted sections attesting to Rose's involvement. This undermined his earlier statement that such evidence was inadmissible as evidence against Rose but only served to cast doubt on the reliability of Fred's 'evidence' (provided in the form of the taped interviews). The judge's support of her evidence was further indicated by protective attitude to Janet; for example, by explaining why she did not warn the police of Fred's deceit<sup>71</sup> at interview and justifying his over familiar letter to her. The nomenclature patterns which were largely insignificant throughout the rest of the summing up change here, confirming the judge's support for the proposition - that the evidence submitted by Janet represented the truth. Whereas throughout the trial Fred was consistently named as either Mr West, Frederick West or Fred West 58-60% of the time, during the third day of the summing up, which focused heavily on the prosecution rebuttal evidence this rose to 84%, arguably indicating the attribution of credibility to Fred.

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<sup>70</sup> Janet Leech accompanied Fred during his police interviews as and 'appropriate adult and later developed a friendship with him. During her testimony she claimed that Fred had confessed to her that Rose had instigated the murders and that he was lying to the police to protect her.

<sup>71</sup> Janet claimed that Fred had admitted to her that he had lied to the police in interview when claiming that he acted alone.



The damage done to the defence by the judge's lengthy review of evidence of Rose's involvement (according to Janet Leech), albeit inadmissible as such, was then compounded as the judge launched immediately into the testimony of the prison psychiatrist. This testimony was similar in substance and again inadmissible as evidence of Rose's involvement. What is more, not only was the speech regarding the taped interviews and the rebuttal evidence clearly weighted in favour of the prosecution, but also the judge went on to hint at the injustice done to the prosecution by the rules which excluded such admissions:

'You may think it very odd that the defence can take into account evidence in favour of Rosemary West but what is said by the same individual on another occasion in other tapes cannot be taken into account against her. You may have thought what is sauce for the goose is sauce for the gander, but that is not the position.'<sup>72</sup>

The judge's supportive attitude towards Janet Leech was also evident in relation to other prosecution witnesses, as was the case in the summing up in Myra's trial. For example, Liz Agius,<sup>73</sup> Caroline Owens,<sup>74</sup> Christopher Davis<sup>75</sup> and Katherine Halliday<sup>76</sup> all received the support of the judge. The failure of the prosecution to bring evidence to substantiate the extent of Caroline Owens injuries and the defence's revelation that there was no visible bruising in police photographs was not raised by the judge in his summation. On the contrary he described the sentence the court imposed for Fred and Rose's attack on her 'ludicrously low',<sup>77</sup> thus implicitly accepting the prosecution's version of events. Similarly, inconsistencies or weaknesses in the prosecution witness testimonies were glossed over. For example, Christopher Davis describes hearing a scream in the night at Cromwell Street. The defence's cross-examination of him revealed he had exaggerated his account of this scream (specifically how long it lasted) over time. The judge dismissed his exaggeration:

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<sup>72</sup> 20/11/95 p28.

<sup>73</sup> Who testifies that she was drugged and subsequently abused by Rose and Fred.

<sup>74</sup> Who the Wests were convicted of indecently assaulting and who testifies that she was in fact raped by them.

<sup>75</sup> The Wests' son-in-law who testifies that he heard screaming during the night at Cromwell Street.

<sup>76</sup> Who had a consensual sexual relationship with Rose for a period of months, but whose testimony 'reconstructs' the relationship so that she appears to be a further victim of the Wests.

<sup>77</sup> 16/11/95 p96



‘Whichever it is, it is a very long time, members of the jury.’<sup>78</sup>

The judge also defended Liz Agius who was found to have lied by the defence:

‘... you saw her. Was her refusal to tell that which she had told the police officer because of fear that the revelation would destroy her marriage or was the reason something more sinister?’<sup>79</sup>

This tactic of requesting the jury to recall the witness, thereby humanising them, was frequently used by the judge in support of prosecution witnesses:

‘Ask yourselves, remembering the witness, is this invention, is it fantasy or is it the truth?’<sup>80</sup>

‘Once again, with this next piece of evidence, is it made up? ... you remember the witness, it is for you to say.’<sup>81</sup>

‘Remember the impression she made upon you at the time.’<sup>82</sup>

Such statements, commentary and rhetorical questions embody the assumption that the truth of the testimonies was evident merely from the appearance of the witnesses.

This contrasts with the judge’s introduction of Rose’s own testimony, which was typically supplemented with commentary such as ‘this is Rosemary giving evidence’. Thus, the judge failed to conjure up the image of Rose in the witness box. Furthermore, he distanced himself from her evidence confirming that it was ‘her evidence’ and not accepted by him thereby implicitly casting doubt on its truthfulness. The attribution names and faces to prosecution witnesses was coupled with the inclusion of prosecution witness statements that confirm their honesty, such as:

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<sup>78</sup> 17/11/95 p106

<sup>79</sup> 16/11/95 p79

<sup>80</sup> 16/11/95 p63

<sup>81</sup> 16/11/95 p67

<sup>82</sup> 20/11/95 p13



‘... the things that I have told this court are the truth.’<sup>83</sup>

Fine detail was recounted in the judge’s review of their evidence, again indicating the reliability of the prosecution witnesses:

‘There were two cups of coffee made ... his being the smallest, one sugar, no milk.’<sup>84</sup>

The overall effect was that the prosecution witnesses received the judge’s support throughout the summing up, whereas both Fred and Rose were attacked for their unreliability:

‘... whether that is attributable to a failure of imagination or simply genuine confusion on his [Fred’s] part is again for you to say.’<sup>85</sup>

‘Of course whether in any particular instance Rosemary West has told lies is for you to say ... she has not admitted to telling any lies, but suppose you were to find that she had lied to other people ... or had lied to you? What are you to make of that?’<sup>86</sup>

The judge’s attack on the defence case was strong. His attack was made subtly through the structure of the summing up, something which may only be evident in a textural analysis. A more overt attack was made through the heavy use of destructive and damaging comment. During the closing speech the defence noted the gap between the evidence and a conclusion of guilt, which the prosecution filled with an attack on Rose’s character and femininity. Through his summing up the judge denied and disguised that gap: denying it through the commentary that accompanied his review of the evidence and disguised through the structure he developed.<sup>87</sup> It is also notable that he also endorsed the gender stereotyping and character decimation employed by the prosecution case.

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<sup>83</sup> 16/11/95 p63

<sup>84</sup> 16/11/95 p107

<sup>85</sup> 16/11/95 p16, in addition to this and other similar statements the judge spends considerable time on the evidence of Janet Leech which rebuts the defence submission of Fred’s assumption of responsibility, above.

<sup>86</sup> 20/11/95 p33

<sup>87</sup> The judge does not mention the evidentiary gap during the summing up.



## **Gender Construction in the Summing Up**

The structure of the summing up not only affected the presentation of the evidence, but also reflected and compounded the different uses of gender in the main body of the trials. For example, the almost total adoption of the prosecution constructions and the denial of defence constructions in the Rose West summing up was exacerbated by the structure of the speech which confirmed the prosecution theory. The structure of the Myra Hindley summing up however, like the judge's approach to the evidence, was more balanced.

### **Myra Hindley**

The judge in the summing up of Myra's trial appeared to settle for constructing her behaviour as, at worst, that of an accomplice. He appeared to struggle with the gender issues<sup>88</sup> raised by the evidence presented. Although gender issues were raised implicitly throughout the review of evidence, in the summing up the judge did not engage in or emulate the explicit construction of sexuality presented by the prosecution. For example, the sexualisation of Myra and Ian's relationships with the victims was not evident in the summing up.<sup>89</sup> The summing up was based around the core facts of the case, although this alone raised issues of gender with which the judge was forced to deal.

The conflict with which the judge was faced was between the two contradictory stories produced by the prosecution and the defence. Myra's involvement or her innocence. The evidence against her was strong and the judge inevitably conceded her involvement:

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<sup>88</sup> Gender in this case refers only to issues raised about Myra's femininity, masculinity is not an issue in the summing up.

<sup>89</sup> There is very little reference to sexuality in the summing up beyond the concession that the victims were subject to sexual abuse (below), Myra's sexuality is not commented on beyond the judge noting that she was Ian's 'mistress'.



‘You have seen the pictures and heard that Hindley’s fingerprints were on them, which shows that she has seen the pictures. She heard the tape and allowed it to be kept. She was with Brady when the suitcases were taken to the station, and you have heard that her prayer book was used for the concealment of the ticket.’<sup>90</sup>

This extract however is indicative of his approach to her involvement, which he deems to be secondary: she saw the pictures, she allowed them to be kept, she was with Brady. Although in strict legal terms she is not regarded as an accomplice (except in the murder of John Kilbride for which Myra was charged and tried as an accessory after the fact) in the judge’s interpretation of her involvement she does not bear full responsibility.

His review of the evidence did not shy away from her involvement:

‘... she was the driver ... Brady was quite dependant on her for transport’<sup>91</sup>

‘... she had become the owner of two revolvers which were found fully loaded in her bedroom.’

‘... he was picked up in some way in a car driven by Hindley.’<sup>92</sup>

‘Fourteen blows to the head ... done, say the prosecution by Brady with Hindley present.’<sup>93</sup>

But it is clear from the nature of this evidence that the judge perceived her role to be supplier of tools, provider of transport and observer.

The judge’s acceptance of Myra’s role as handmaiden was facilitated by the general assumption that she was the subordinate party in the relationship and, indeed, in the commission of the crimes, something that was conceded to some extent even by the prosecution. On the one hand it was their relationship which condemned her:

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<sup>90</sup> p159

<sup>91</sup> p136

<sup>92</sup> p96

<sup>93</sup> p96



‘Nobody has suggested that he had anyone whom he would have shared such an operation with other than the accused Hindley.’<sup>94</sup>

But it was this relationship which was also responsible for her partial mitigation. Thus, the judge noted her total dependence on and trust of Ian by emphasising her use of the theme of loyalty. This theme constituted several pages of the summing up:

‘... (she says) if she has told any lies at any stage to the police that was not for her own protection, but to shield Brady’<sup>95</sup>

‘She maintains that attitude, that she was devoted to Ian, and was only concerned in protecting him.’<sup>96</sup>

The focus on this evidence and other indicators in the trial imply that the judge accepted the prosecution’s suggestion of her full involvement:

‘(the prosecution say) she was in with him on everything, and that she was as bad as him. She was the essential car driver ... and in the Downey and Evans cases clearly she was and active and willing participant ... in the Kilbride case she must have known exactly where she was.’<sup>97</sup>

He also, however, accepted the defence’s construction of her subordination.<sup>98</sup> However, in constructing her accomplice role it was also necessary that he sacrificed some aspects of her femininity and it was evident that he was happy to do so.

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<sup>94</sup> p157

<sup>95</sup> p157

<sup>96</sup> p161

<sup>97</sup> p157

<sup>98</sup> However, although the judge accepts Myra’s role as handmaiden it is a role which is clearly distinguished from that played by David Smith in the murder of Evans. At the beginning of the summing up the judge distinguishes innocent involvement and accessorial liability, using the an example in which the participants are named ‘A’ and ‘B’: ‘B may be merely a passive spectator, possibly a terrified and horrified spectator, doing nothing to interfere, making no attempt to save the victim, but in no way party to what A is doing.’ (p86). As the summing up progresses it is clear that whilst Myra may be partially mitigated by her relationship by Ian, she is not ‘B’. It is evident however that the role of ‘B’ is in fact more suitable for David who throughout the summing up is both excused for his involvement by his young age (p111, 124, 129) and praised for his role in the arrest of Ian and Myra (‘But Smith was the one who went to the police about Evans’ p118).



Despite the fact that the judge did not employ the powerful construction of deviant sexuality offered by the prosecution, his summing up was none-the-less damning of Myra's femininity. It was simply the case that, as a consequence of the nature of the evidence and the nature of gendered roles at that time that associated women with caring and motherhood,<sup>99</sup> Myra's femininity was implicitly undermined. By accepting her involvement the judge also accepted the loss of femininity evidenced, for example, through her role in the torture of Lesley Ann:

'... she had to look out of the window because she could not bear to watch what was going on; does that not make her as a bad as the man, and that there was nothing to choose between them in the way they were treating the child?'<sup>100</sup>

He did not shy away however in underlining this 'self-evident' deviant femininity by providing contrasting models of good femininity, such as the mother of John Kilbride whose maternity the judge took to be self evident:

'... the mother identified the jacket by its unusual buttons which you saw for yourselves, and she had turned down the hem of the jacket herself. She recognised the vest as one of his father's that she had taken in at the sides in order to make it fit. She recognised the jumper by the name of the makers, and the trousers by the buttons she had sewn on, as anyone would.'<sup>101</sup>

The implicit response demanded by these statements and rhetorical questions betrayed the contrasting 'femininities' of Myra and John's mother. Both rhetorical and implicative questions (i.e. where the answer is implied or obvious) betray the judge's stance on cases and their desired outcome and can prove disastrous for the side disadvantaged by this method of summing up.<sup>102</sup>

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<sup>99</sup> For example, in the aftermath of the war women's role as wife, mother, carer and stabilising influence in the family was strongly evident in political discourse of the time. See E Wilson *'Only Halfway to Paradise: Women in postwar Britain 1945-1968'* London:Tavistock (1980).

<sup>100</sup> p112

<sup>101</sup> p119

<sup>102</sup> P Robertshaw *'Summary Justice: judges address juries'* Cassel: London and Washington (1998), p137.



The summing up was conducted in a low emotional key. This was most evident in the judge's refusal to exploit the most damaging evidence (the tape recording of Lesley Anne) to its full potential. Remarking on it only in a semi-neutral manner:

'If it was her voice the next question is going to be - what were you doing to that child to produce those results? Was she a reluctant woman, and so embarrassed that she had to look out of the window and *all the rest of it?*'<sup>103</sup>

[My italics]

Whilst the judge was dismissive of Myra's explanation of her involvement and again used rhetorical questions to damn the defence's version of events, he did not exploit the tape recording. His failure or refusal to remark on the particular horror of the recording and comment on Myra's unfeminine and unmaternal behaviour rendered the summing up account very different to the prosecution's exploitation of that evidence. This response to the tape recording reflects the overall attitude of the judge in the summing up which may be broadly described as evidential rather than emotive or gender based.

In contrast to the summing up in Rose's trial, Myra's femininity was not obliterated by her involvement, she retained some degree of femininity. It may even be said that it was the very fact of her femaleness which lead him to accept her complicity. Her conviction appears to have been secured by the *evidence* brought by the prosecution and the judge did not seek to embellish or further construct her role.

## **Rose West**

In contrast, as in the main bodies of the trials, the use of gendered stereotypes in the summing up of Rose's trial was prolific. In Rose's trial there was an almost complete adoption of prosecution versions of sexuality and maternity. The judge adopted the prosecution tactic of using images of deviancy to ensure a conviction in spite of the weaker evidence. Thus, the summing up embodied a gradual and progressive de-feminisation of Rose through maternity and sexuality. This contrasts with the summing up in Myra's trial in which references to both maternity and sexuality were infrequent.

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<sup>103</sup> p114



The judge initially conceded the evidence regarding her teenage affinity with children, even Fred's children. This, however, was one of the only concessions the summing up made to the defence's construction of Rose's femininity. Half way into the first day<sup>104</sup> of the summing up the defeminisation of Rose through the themes of maternity and sexuality had commenced. The previous portrayal of her normal and caring relationship was undermined as the judge quoted the prosecution submissions that she beat Charmaine and allowed Fred to have sex with Anne Marie. At the same time the construction of her deviant sexuality began:

'The prosecution say Anne Marie gives powerful support to the submission they make that Rosemary and Frederick West were together involved in the sexual abuse of young women, and that is quite regardless of any sexual escapades, adventures, misdemeanours or crimes that Frederick may have been involved with at other times.'<sup>105</sup>

This quote belies a pattern which was integral to the summing up, the minimisation of the Fred's role, as was also done throughout the prosecution case. Throughout the summing up the judge focused almost entirely on the prosecution evidence of Rose's role whilst minimising the defence's evidence of Fred's role.<sup>106</sup> Whilst this is explicable because it was Rose who was on trial, Fred being dead, the minimisation of Fred's role brought Rose to the fore in scenarios where, had they been tried together, her participation would have been regarded differently, perhaps as accomplice. In the context of sexuality, joint or individual abuse by Rose was always referred to as sexual abuse, whereas Fred's record of rape and abuse was played down and dismissed as escapades, adventures or misdemeanours, and perhaps, at worst, and as an afterthought, a crime.

Once this attack on Rose's character and femininity commenced, her deviant maternity and sexuality became an important theme of the summing up. The attack on her maternity was four-fold; First, the judge discussed evidence of the unjustified physical abuse of her step children:

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<sup>104</sup> The summing up lasted just over two days.

<sup>105</sup> p61



‘She (Anne Marie) spoke of another occasion when Charmaine was tied to the bed, she could not say why.’<sup>107</sup>

Indifference to their well-being was mentioned:

‘Mrs Dix recalls her saying ... ‘I am not bothered whether she (Heather) is dead or alive, she has made her bed and she must lie in it.’’<sup>108</sup>

Secondly, the judge expressed clear disapproval of her behaviour as a mother:

‘what on earth was Anne Marie doing there (in a pub) at 12 and a half ? ... They had drinks and she remembers that she had barley wine ... I think that comes in small bottles and is very strong.’<sup>109</sup>

Thirdly, he raised her exploitation of female identity and maternity to lure victims:

‘She (Caroline Owens) felt confident about getting in the car because there was a woman there.’<sup>110</sup>

‘She (Miss A) said Rose made her feel as though she, Rose, really cared about her and gave her food and drink.’<sup>111</sup>

And finally, despite having warned the jury against accepting Fred’s interviews as evidence against Rose, the judge used them to expose her as the antithesis of ‘motherhood’:

‘... he said that Rose would have done that ... by which he meant ... would have (taken) the baby from where it was supposed to be, in Shirley.’<sup>112</sup>

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<sup>106</sup> This is explored in full below.

<sup>107</sup> p43

<sup>108</sup> 17/11/95 p111

<sup>109</sup> 17/11/95 p59

<sup>110</sup> 16/11/95 p82

<sup>111</sup> 17/11/95 p34

<sup>112</sup> Shirley Ann Robinson, the eighth victim, was pregnant by Fred West when she died. Her unborn baby was laid next to her in her grave, evidently having been removed from her womb before burial: 17/11/95 p96.



There was a similar demonisation of Rose through the construction of deviant, aggressive and promiscuous sexuality. The summing up was woven with both weak and strong condemnation of Rose in spite of several statements that indicated that her sexuality was not an issue on which judgements regarding guilt or innocence should be based:

‘You are not here to pass moral judgement ...’<sup>113</sup>

‘... involved in that is no condemnation of someone who has lesbian tendencies.’<sup>114</sup>

Such statements themselves raised the issue of morality and sexuality. Furthermore, despite these statements there was ample comment on Rosemary’s sexuality. Her open sexuality was noted:

‘She knocked on the door and Rosemary answered. Rosemary was only dressed in a bra and pants.’<sup>115</sup>

‘Rosemary answered the door. She was wearing a diaphanous blouse.’<sup>116</sup>

In addition, the judge was careful to note her dominant sexuality:

‘She was at pains to stress that Rose West was the dominant partner in their lovemaking and that she made love aggressively.’<sup>117</sup>

As the construction culminates, towards the end of the summing up it was also noted that she was a prostitute, a lesbian, or bisexual that *she* (rather than she and Fred) possessed a collection of ‘dildos, rubber underwear, pornographic videos, a rice flail, and a whip and a suitcase which contained a quantity of leather straps and buckles.’<sup>118</sup> Having reviewed the mass of sexual evidence submitted by the prosecution the judge stated that:

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<sup>113</sup> 20/11/95 p11

<sup>114</sup> 17/11/95 p31

<sup>115</sup> 17/11/95 p35

<sup>116</sup> 17/11/95 p36

<sup>117</sup> 20/11/95 p5



‘I am not troubling you ... with all the evidence concerning the goings on at 25 Cromwell Street ... You are not here to pass moral judgement and I pass over, therefore, the relationships between Rosemary West and the various men, including Mr Dobbs, who sought solace from Rosemary at a time of marital difficulty.’<sup>119</sup>

Within this statement Rose’s promiscuity was both noted and criticised whilst, as throughout the summing up, those with whom she acted were shielded from criticism. She was, through the lengthy review of prosecution evidence, particularly that of Katherine Halliday, which covered seven pages proceeding the above statement, ‘revealed’ to be a sexual ‘vamp’.

Yet having devoted considerable time and attention to Rose’s sexuality the judge concluded:

‘You have heard of certain sexual practises indulged in by Rosemary West. That evidence was admitted ... to refute any suggestion that only a man would have an interest in sexually abusing young women. In the event that evidence might not have been necessary because Rosemary West has never disputed her interest in young women.’<sup>120</sup>

The evidence regarding both Rose’s sexuality and maternity was, in most instances, simply a regurgitation of the prosecution case. Whilst a review of the prosecution evidence is one of the key purposes of the summing up, it is the disproportionate attention it was awarded, the weight it was afforded and structure within which it was recounted which was the problematic element of the judge’s approach. Because of all these elements the summing up was essentially biased toward the prosecution case.

The extensive use of the prosecution’s evidence also affected the construction of Rose’s agency and the nature of her role in the reported abuse in the summing up. Like the constructions of sexuality and maternity the portrayal of Rose was at odds with

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<sup>118</sup> 20/11/95 p9

<sup>119</sup> 20/11/95 p11

<sup>120</sup> 20/11/95 p29



traditional notions of femininity as her claims of passivity were dismissed or minimised and she was constructed as both active and responsible. The judge cast doubt on her claims of passivity and victimisation, which Rose used to explain her relationship with Fred, in two ways, they were afforded little attention in the summing up and when they were referred to, doubt was cast upon them. For example, he noted that the two rapes Rose claimed to have suffered at a young age were unreported and hinted that her evidence was unreliable:

‘She told you that she felt abandoned by her mother and father, although that may be at odds with her mother’s evidence. But you may think that events seen from a different viewpoint or perspective will often be recalled differently.’<sup>121</sup>

Here the judge did not suggest that she is lying, as there was no hard evidence to support or refute her claim, but that Rose may have been *mistaken*. Furthermore, he made it clear that Rose’s evidence was distinguished from evidence which he accepted:

‘She told you that Frederick West promised her the world, to love her and care for her and she fell for it. I am reminding you of her evidence now ...’<sup>122</sup>

Here it is evident that Rose’s evidence was encased or sandwiched between phrases that emphasised that it was merely evidence (‘She told you’ and ‘I am reminding you of her evidence now’) and was not accepted by the judge, but that he was merely reporting her claims. In doing so the judge raised doubts and discrepancies over the defence evidence.<sup>123</sup> This contrasts with the prosecution evidence which ran in long passages and appeared almost as the judge’s own words.

This defence evidence as to her passivity, like that of other aspects of the speech that concede her femininity, was restricted to the beginning of the summing up. It appears that such evidence was included only as background to the offences which were

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<sup>121</sup> 16/11/95 p18

<sup>122</sup> 16/11/95 p20

<sup>123</sup> This is similar to the approach of judges observed in the research conducted by Sargant and Hill, in which the prosecution were observed to ‘...play down the discrepancies in the prosecution evidence and play up the weaknesses of the defence’ (*Criminal Trials: the search for truth* Fabian Research Series No348 Oct 1986, p12). Similarly the Judge in the Birmingham Six case divided the summing up into chapters drawing conclusions at the end of each section and making damning comments on the defence case: C Walker and K Starmer *Miscarriages of Justice* Blackstone Press Ltd (1999), p226.



described in the later stages and which came to dominate the summing up. Likewise, suggestions of her lack of agency were confined to the opening sections of the summing up:

‘... (Rose said) by way of excuse or explanation that she was very young at the time.’<sup>124</sup>

‘Please bear in mind that at this time Rosemary West was only 17, I think.’<sup>125</sup>

As with other themes featuring in the summing up, these initial concessions to the defence case were then abandoned as the speech progressed and the prosecution constructions became the core of the narrative. It is that narrative that would have been freshest in the juror’s minds at the time of their decision.

Like the judge in Myra’s trial, at the beginning of the speech the judge used an example to illustrate the concept of complicity. Like all other aspects of the summing up however, the example used was itself weighted against Rose. Unlike the judge in Myra’s trial who used characters named ‘A’ and ‘B’ when describing the concept of complicity using examples, the judge in this case used Rose herself:

‘Suppose you were sure that Rosemary West had enticed a particular young woman Cromwell Street as part of a joint plan ... that she be rendered helpless and sexually abused as a prelude to being killed or caused some really serious bodily harm ...’<sup>126</sup>

Thus, not only was the tone of the summing up set against Rose from the very beginning, but the brief inclusion of the defence’s evidence which feminises Rose was tainted by this description.

Following the initial inclusion of evidence of Rose’s passivity and lack of agency, the judge focused predominantly on the prosecution’s construction of Rose’s active role and quoted verbatim huge portions of prosecution witness’s evidence. Consequently he

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<sup>124</sup> 16/11/95 p49

<sup>125</sup> 16/11/95 p40

<sup>126</sup> 16/11/95 p3



implicitly not only rejected the defence's dual construction of passivity and innocence, but excluded it too and instead focused on her active participation in sexual abuse. This was particularly the case in his so-called 'summary' of the testimony of Miss A which covered over twenty pages:<sup>127</sup>

'Then some tape was produced. It was produced by Rosemary.'<sup>128</sup>

'Afterwards Rose put something that may have been a candle into her vagina.'<sup>129</sup>

'... she thought it was Rose who eventually pulled it out.'<sup>130</sup>

'The stuff (semen) was rubbed into her back. She knew it was Rose because of the feel of her hands.'<sup>131</sup>

'She told you about Rosemary putting her hand underneath and touching her nipples and twisting them. She said it really hurt.'<sup>132</sup>

The judge focused continually on Rose's participation to the exclusion of Fred who was present throughout and who in fact raped Miss A.

As the summary of the evidence was in essence a reproduction, almost in full, of the prosecution case, the pattern of the accompanying minimisation of Fred's role also featured in the speech. However, both Rose's active role and the minimisation of Fred's role were not merely included in the summing up but were emphasised: for example, minor inaccuracies such as 'she (Miss A) was undressed completely',<sup>133</sup> when in fact Miss A undressed herself, and the repetition of descriptions of acts attributed to Rose<sup>134</sup> emphasised her role. The minimisation of Fred's abusive behaviour was however most acute. Defence evidence of his solo sexual offending which supported the view that

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<sup>127</sup> This is also true however of the evidence of Miss X, Anne Marie and Katherine Halliday.

<sup>128</sup> 17/11/95 p39

<sup>129</sup> 17/11/95 p43

<sup>130</sup> 17/11/95 p44

<sup>131</sup> 17/11/95 p44

<sup>132</sup> 17/11/95 p44

<sup>133</sup> 17/11/95 p38. Whereas in truth Miss A undressed herself. The occasion on which Rose went into the bathroom whilst Caroline Owens was in the bath is also misrepresented as happening 'occasionally' (16/11/95 p83).



Rose was either uninvolved or passive, and thus contradicted or undermined the prosecution construction of her as the leading partner in the abuse, received scant attention from the judge. Victim's stories of his attacks were covered in short paragraphs omitting the detail and drama included in prosecution accounts of joint attacks or sexual relations. The murders Fred was known to have carried out alone received minimal attention and the defence victims (who gave evidence that they were attacked by Fred acting alone) were abstracted as their backgrounds, personalities and lives were omitted from the speech unlike those of the prosecution victims.<sup>135</sup>

When the evidence of defence witnesses was included it was accompanied by dismissive remarks:

‘She told you, perhaps over dramatically, that until that moment she had not known what fear was.’

Fred's acts were mitigated as he was noted to apologise:

‘... he started crying and said he was sorry.’<sup>136</sup>

And doubt was cast on his identity, thereby reducing the value of these defence testimonies:

‘This would not be a positive identification upon which any jury would be able to convict Frederick West ...’<sup>137</sup>

‘She saw an artists impression of Frederick West and considers that he is the man who probably attacked her in 1975.’<sup>138</sup>

The comment which accompanied the review of the defence evidence and its minimisation meant that Fred appeared only fleetingly in the summary of witnesses’

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<sup>134</sup> For example p39 sees the repetition of Rose being the person who provided the tape for the binding of Miss A: (17/11/95).

<sup>135</sup> This is explored in full below.

<sup>136</sup> 11/11/95 p91, also p20.

<sup>137</sup> 16/11/95 p22

<sup>138</sup> 17/11/95 p32



accounts of sexual relations and abuse<sup>139</sup> and as a shadowy figure located firmly in the background. This neglect of Fred's role seriously undermined the defence case which relied on Fred's role as a key element of their case. The judge supported the prosecution construction of Rose as equal, if not dominant, in the killings. Rose was placed squarely in the spotlight and portrayed as both active and sexually aggressive.

Although it is evident that the judge's views were communicated in the summing up in Myra's trial, these views were founded upon and clearly supportable by the evidence. Far more was required by the judge to encourage a conviction in Rose's case in the light of the evidential gap. Consequently, the more common structure<sup>140</sup> evident in Myra's case was abandoned for one that supported very strongly the prosecution narrative, structure and case construction, and thus implicitly undermined the defence case. Similarly, there are differences in the use of gender construction in the summings up. Again, the judge apparently perceived no need to rely on discourses of maternity and sexuality to secure a guilty verdict in Myra's case, but the discourses featured heavily in the summation in Rose's trial.

The differences in the approaches to gender were most acute in relation to the construction of each woman's role. In Myra's case the judge, like the prosecution in the main body of the trial, actually made some concession to her subordination and passivity. Interestingly this perception of Myra's role is wholly rejected today. It is possible that this concession may have been as a consequence of the lesser evidence against Myra than Ian, although it could be argued that the tape recording of her role in the death of Lesley Anne *could* have been used as evidence against that construction. The judge however did not exploit the tape recording. It is possible, therefore, that the concession was a consequence of the deeply ingrained perception of gender at the time and the inability of the judge to contemplate a woman's active role in the killings. The position in the summing up in Rose's trial, thirty years later, like the more developed understanding of gender at the time, was very different. The judge's complete acceptance of the prosecution case (its narrative and gender constructions) meant that he also accepted and endorsed their construction of Rose's dominant role.

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<sup>139</sup> There is some discussion of his police interviews, however, the way in which this is presented, with the focus on the prosecution selected interviews, serves only to strengthen the prosecution construction of Rose's active role.



## The Construction of the Victims

Just as the construction of both Rose and Myra in the summing up mirrored, to greater or lesser extents, the prosecution constructions of them in the main body of the trial, the descriptions of the victims also embodied the prosecution portrayals.

In the Rose West summation the judge added nothing new. The descriptions of the dead victims' bodies and their lives before they died were repeated almost verbatim by the judge throughout the second day of the summing up. His adoption of the prosecution approach to the victims was so complete that he even adopted the familiarity theme through which the prosecution constructed the systematic nature of the killings in their opening speech,<sup>141</sup>:

'... decapitated in a way which has become only too familiar to you.'<sup>142</sup>

The judge's discussion of the facts and his reification of the victims was accompanied by a commentary that underlined the horrific nature of their suffering. As he addressed each case he instructed the jury to look at a photograph of the victim and went on to describe her character and life, followed by what was done to her by the Wests:

'I am sorry to do this to you ... but you must imagine what might be involved in cutting out a single rib, a collar bone, fingers and toes easier perhaps.'<sup>143</sup>

'I expect, like me, you would prefer to believe that it (removal of bones) were done after death ...'<sup>144</sup>

Similarly the judge adopted the prosecution construction of the surviving victims. In his word for word repetition of their evidence, the significant amount of attention he awarded their testimonies and his support of their versions of events, he confirmed their

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<sup>140</sup> R Pattenden *Judicial Discretion and Criminal Litigation* Clarendon Press: Oxford (1990), p178

<sup>141</sup> Ch 5

<sup>142</sup> 20/11/95 p116, also see p97

<sup>143</sup> 16/11 95 p61

<sup>144</sup> 17/11/95 p72



construction as ‘victims’ and thus lent powerful support to their testimonies, which were crucial to the prosecution case.

And so, the consequences of the crimes and abuse Rose was accused of, and which the judge seemed to believe she should be convicted of, were plain for the jury to see. When this construction of the victims was combined with the construction of Rose’s active role and deviant femininity, the effect of the structure and weighting of the speech in the favour of the prosecution, and the relative status of the judge and jury, the finding of her guilt seems inevitable.

It is probable that the description of the victims in the summing up in Myra and Ian’s trial followed a similar pattern (that is following the prosecution constructions), although this is not certain as only a proportion of the complete transcript is available. The summation, like that in Rose’s trial, reified the victims in life, although this was limited to the hours leading up to their abduction:

‘Lesley Ann, aged ten, living in Ancotes, Manchester, went on boxing day, 1964, to the fair with about sixpence in her pocket. She was last seen by one of her friends near the dogems at 6pm and she never returned.’

‘... and you know that that little boy had gone missing from Ashton Market ... last being seen by one of his friends somewhere about half past five or six o’clock.’<sup>145</sup>

‘Seventeen years old Edward Evans was last seen in Manchester around 7pm.’<sup>146</sup>

The judge then went on to describe their deaths, sexual abuse and suffering:

‘... (she was) stripped, gagged cruelly and ill-used.’<sup>147</sup>

‘Photographed in these pornographic poses ... done to death and her naked body transported in Miss Hindley’s car for burial in this secret burying place on the moors.’<sup>148</sup>

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<sup>145</sup> p120

<sup>146</sup> p96. It is possible that the judge is superficial in Edward Evan’s case because of the accusations that he was gay and was out that night with the intention of picking up other gay men.

<sup>147</sup> p95



‘There you see her, ten years of age, stripped of her clothes, a gag in her mouth, a scarf tied round it, and compelled to pose in those positions you have seen.’<sup>149</sup>

‘Look at the extraordinary position of those underpants, rolled down to his knees and knotted behind as they were - you would not need a forensic scientist to tell you that suggests a very strong probability that he had been indecently interfered with.’<sup>150</sup>

‘You have looked at it again and again - it is the body of Edward Evans tied up. You remember that picture with the knees tied right up to his chest, wrapped up in the polythene wrapping and the rug and he is dead. He has these blows to the head with an axe and there is evidence at some stage a ligature has been tightened ... with considerable force around the neck. Although, of course, the head injuries with the axe in themselves were sufficient to kill him.’<sup>151</sup>

The emphasis on the horrific nature of the murders, however, meant that the prosecution’s use of imagery in relation to the victims’ graves was abandoned. Similarly, there was little focus on the lives of the children before their deaths, perhaps because it was enough to know that they are children and therefore implicitly innocent and vulnerable. In contrast, although the judge’s approach to Edward’s abduction was conspicuously superficial, the evidence indicated that Edward was picked up because he was known to be gay. This would have impugned his innocence and vulnerability, and indeed his character and was therefore ‘brushed over’. The judge’s focus on their status as children was clearly evident in the summing up. This was apparent from the heavy emphasis placed on their young ages through naming patterns. The judge frequently named the victims as ‘child, girl, little girl, lad, or boy’.<sup>152</sup>

The summation therefore described in crude detail the fate of the victims without the prosecution embellishment. This included the exclusion of the prosecution construction of Myra’s pseudo relationship with the victims, which was used to construct her perverse sexuality. Once again it seems that the facts were deemed to speak for

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<sup>148</sup> p95

<sup>149</sup> p110

<sup>150</sup> p95

<sup>151</sup> p101



themselves and so, unlike in Rose's trial, emotive and gender constructions were not necessary in the summing up.

### Conclusion

Structure was evidently an important element in both the cases. In Myra's trial the judge's summary of the prosecution case, both with and without David Smith's evidence, illustrated the strength of their case, and defended it from the defence's argument that David's interest in conviction<sup>153</sup> rendered his evidence unreliable. The structure of the summing up in Rose's trial confirmed the prosecution version of events and thus minimised and neutralised the challenge presented by the defence evidence. In addition to the structural leaning of the summings up, in both cases the judge's confirmation of the victims' suffering and the prosecutions portrayals of them also supported their cases. However, the judge in Rose's trial went further. His adoption of the prosecution's gender based construction of Rose both strengthened the power of the speech and further endorsed his acceptance of the prosecution's case. The literature illustrates that the jury are frequently influenced by the judge, whose status and import, compared to their passivity and lack of experience, renders his speech powerful.

What is interesting, however, is that the judge's structural approach to the summing up in Rose's trial implicitly *confirmed* the gap in the evidence. The comparison of two trials, one where the evidence was weak and the other where it was strong, reveals the summation techniques employed by the judge in the former case to overcome the problem of the evidentiary weaknesses. If the evidence were strong why would such extreme measures be assumed in the speech?

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<sup>152</sup> These appellations are used 61 times in the summing up.

<sup>153</sup> Both because his version of events renders him less culpable, and because he had contracted to sell his story to 'The Sun' in case of Ian and Myra's conviction.



### Conclusion

#### The Use of Femininity in Case Construction

In the aftermath of the First World War women's role as wife, mother, carer and stabilising influence in the family was markedly evident in political discourse.<sup>1</sup> This remained so for decades. Stereotypes that associated women with sexual conservatism, maternity and domesticity were still pervasive in society during the 1960s.<sup>2</sup> One may therefore expect substantial gender stereotyping in the trial of Myra Hindley.<sup>3</sup> However, the examination of the available transcripts has revealed that the construction of Myra Hindley's femininity was more subtle than that of Rose West.

In Myra Hindley's trial a number of characteristics of femininity were evident which appeared to be a reflection of the social and cultural norms operating outside of the courtroom. These characteristics, the association of women with relationships and emotions, and with the feminine, domestic realm, were implicit in the way in which events were discussed and represented. In addition, a number of feminine stereotypes were more actively employed by counsel. Maternity, passivity, and sexuality and agency were used by the defence and prosecution respectively, predominantly during Myra Hindley's testimony, to ally her with either good, or bad femininity. In contrast, three themes dominated Rose West's trial: maternity, sexuality and agency were used in varying ways by the prosecution and defence. The defence sought to construct Rose West as maternal, sexually passive and as dominated by Fred West. The prosecution used the same basic stereotypes, but to portray Rose West as exploiting and twisting her maternity, as sexually aggressive and, as equal to, if not dominating, Fred West.

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<sup>1</sup> See E Wilson *'Only Halfway to Paradise: Women in post-war Britain 1945-1968'* London, Tavistock (1980).

<sup>2</sup> See L McQuiston *'Suffragettes to She-Devils: women's liberation and beyond'* Phaidon Press Ltd (1997).

<sup>3</sup> For the purposes of this chapter characters from the trials will be named using first name and surname to minimise confusion.



Given the stronger and more prolific nature of stereotypes of femininity in 1960s society, the weaker stereotyping in Myra Hindley's trial is surprising, although it can be explained. It is proposed that there are two reasons for the findings. The first lies in the nature of the available evidence in the trials, and the second in the available knowledge and discourses at the times of the trials.

The evidence linking Ian Brady to the murders of Lesley Ann Downey and Edward Evans was strong, and the story Ian Brady told to explain the evidence was weak. Once his guilt in relation to these two cases was decided it was also easy to link him to the death of John Kilbride, the apparent facts being similar. His relationship with Myra Hindley and some of the evidence, particularly the tape recording of Lesley Ann Downey and David Smith's evidence, meant that the conclusion of her guilt flowed from the finding of Ian Brady's. The weight of evidence may partially explain counsel's lack of dependence on gendered constructions. Given the strength of evidence the amount of deductive reasoning required by the jury was minimal. Perhaps, therefore, prosecution counsel did not need to rely on gender stereotypes, in the form of generalisations, to make their story more plausible to the jury.

The evidence in Rose West's trial was much more tenuous. In the absence of the similar fact evidence the case would have been merely circumstantial. The only 'evidence' of her involvement would have been the evidence that she knew or had come into contact with some, although not all, of the victims, and that their bodies were found buried in houses that she had lived in with the man who admitted to all of the killings. The similar fact evidence illustrated her involvement in the sexual abuse of young girls and women. It was that this linked her, although indirectly, to the murders. This evidence amounted to evidence of deviant, inappropriate femininity. The similar fact evidence *was* the construction of bad femininity, which was crucial to bridge the gap left by the circumstantial nature of the evidence.

However, the amount of evidence alone cannot account for the lack of recourse to femininity in Myra Hindley's trial. For example, although the prosecution did see some merit in attacking Myra Hindley's sexuality (and found evidence from which to do this), doing so in her cross-examination, it is noticeable that they *only* did so in her cross-examination. This contrasts with the approach in Rose West's case, where the theme of



deviant/aggressive sexuality was identified early on in the trial (the opening speech) and featured in almost all of the testimonies thereafter. In other words, in Myra Hindley's trial it was not a theme that ran throughout the trial. Furthermore, the evidential approach does not explain why Myra Hindley's *defence counsel* did not rely more heavily on constructs of good femininity. This may be explained in part by the limitation Myra Hindley placed on their case as a consequence of her desire to protect Ian Brady (now that she no longer wishes to protect him, Myra Hindley uses domestic violence to explain her actions, claiming that Ian Brady abused her). In addition, it could be argued that in the face of the strong evidence such an approach by the defence would have been futile. These explanations, however, only provide partial justification. In relation to the former, stereotypes were evident in the trial that sought to draw on femininity whilst not harming Ian Brady's defence. Yet the defence appeared not to exploit them to their fullest capacity. Instead they seemed to be struggling to clearly identify them at all. In relation to the latter, it is evident from Rose West's trial, in which the defence sought to construct passive sexuality despite the similar fact evidence which clearly portrayed Rose West's sexuality as violent and aggressive, that employing gender constructions was not considered futile, at least not in the 1990s.

It is argued, therefore, that the key difference in the trials was that gender stereotypes were employed in a limited way in Myra Hindley's trial, to attack the character of the accused, predominantly during her cross-examination. In Rose West's trial however, gender stereotypes constituted a theme in the narrative. These themes not only portrayed bad character, they made counsels' narratives more acceptable to the jury and formed crucial elements of the opposing narratives.

It is suggested that the reason for the limited use of gender stereotyping in Myra Hindley's trial is that the utility of gendered constructions was less well understood in the 1960s than it was thirty years later. Since the 1960s feminist work has set about deconstructing the norm of femininity embodied in the law.<sup>4</sup> This now large body of feminist work has uncovered the ways in which women are represented in the criminal justice system and the ways in which that construction can be used to either benefit, or disadvantage them. It is argued, therefore, that the constructions of good and bad

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<sup>4</sup> See Ch 2 and below.



femininity that have been identified have also been to some extent crystallised or given a more identifiable / concrete form as a consequence of the work by feminists, and that their utility in the criminal justice system is now recognised more than ever by legal professionals. For example, Helena Kennedy describes how she...

‘... learned very quickly , like every other lawyer ... that the nearer I could get to painting my client as a paragon of traditional womanhood, the more likely she was to experience the quality of mercy.’<sup>5</sup>

It may be, therefore, that the limited recourse to gendered stereotypes in Myra Hindley’s trial was a consequence of the ill-defined or simply unavailable discourses at that time. The characteristics of femininity that have been identified in Myra Hindley’s trial are vague and implicit rather than specific or concrete and explicit, particularly those in relation to relationships, emotions and the feminine realm. In both the defence and prosecution’s depiction of events, femininity seemed to inform their perception and understanding of events. Cultural norms were *reflected* in the narratives they presented. Femininity was used as counsel sought to explain Myra Hindley’s criminal behaviour with reference to other areas of her life.<sup>6</sup> The pervasive nature of these norms was generally detrimental to Myra Hindley, her crimes running counter to conventional understandings of the nature of femininity. But, Myra Hindley also benefited from the prosecution’s inability to break free of the presumption of the association of femaleness and passivity. In relation to Myra Hindley and Ian Brady’s version of events, feminine norms were reflected as they sought to portray their lives as *normal*. Implicit in their understanding of normality was the association of femaleness and femininity. Consequently they sought to present Myra Hindley as feminine. This is not however because they recognised the utility of feminine construction in the courtroom, but because ‘normality’ was femininity.

A more defined portrayal of Myra Hindley’s good / bad femininity was evident through maternity, sexuality and passivity. However, though these discourses were more defined, they did not constitute themes of the narrative selected for emphasis.<sup>7</sup> This is

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<sup>5</sup> H Kennedy ‘*Eve Was Framed: women and British justice*’ London, Vintage (1993). p33

<sup>6</sup> See Ch 2 ‘The Incongruity of Women and the Criminal Justice System’.

<sup>7</sup> Anderson and Twining ‘*Analysis of Evidence: How to do things with facts*’ London, Weidenfeld and Nicolson (1991) Ch 3.



obvious because the two most prominent portrayals; maternal carer (defence) and sexually deviant woman (prosecution), were not positive constructions counsel sought to establish throughout the trial. For example, the defence did not introduce the notion of Myra Hindley's maternity until her examination in chief. Similarly, the prosecution's portrayal of deviant sexuality did not emerge until their cross-examination of Myra Hindley.<sup>8</sup> Perhaps most significantly, some of the available testimonies in Myra Hindley's trial did not embody gender constructs relevant to this study, themes of femininity being largely absent.<sup>9</sup> This contrasts with the use of these constructions in Rose's trial where they are evident throughout the trial.

Thus, in Myra Hindley's trial, the reflection of femininity in the prosecution and defence cases, and its use as *part of* more significant constructions (e.g. character), led to a less defined use of gender. It may be, therefore, that gender was evoked not as a theme, but as a generalisation, against which allusions to Myra Hindley's appropriate or inappropriate femininity were intended to be read.

By the 1990s the approach of counsel to gender had become well developed and its use in Rose's trial was sophisticated. The trial was dominated by the prosecution and defence constructions of Rose in terms of sexuality and maternity. Both themes are clearly identifiable from the opening speeches, through to the closing speeches. They portray Rose in terms of good and bad maternity and appropriate and inappropriate sexuality. The portrayals are well formed and defined, and clearly constituted themes in the competing narratives. Other characteristics of femininity, such as relationships and emotions, barely featured in the cases presented to the court. This is indicative of several wider social changes. First, a change is evident in relation to women's role. It is no longer the case that the type of 'subtle' gender constructions evident in Myra Hindley's trial which reflected social norms are evident in the cases presented by counsel. This indicates that assumptions about femininity have changed or weakened. Gendered stereotypes are more likely to enter the courtroom with the express intention that they are part of the constructed case.

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<sup>8</sup> Whilst it should be noted that the whole transcript was not available, were these constructions 'themes' they would have been more clearly evident in the testimonies of the other main witnesses; Ian, David and Maureen.



Second, the growth of feminist work has clarified and defined some of the available feminine discourses. It is argued that women's voices and experiences have, in the past, and to a lesser extent today, been unheard and thus silenced, both in public and legal discourse.<sup>10</sup> For example, domestic violence was an unidentified/unnamed phenomenon prior to the 1970s; it did not exist in public discourse. In legal discourse since the 1960s the progression of feminism has led to the discussion and identification of this and other female experiences such as PMS<sup>11</sup> and female experiences of provocation,<sup>12</sup> diminished responsibility<sup>13</sup> and rape.<sup>14</sup> This more concrete and defined notion of women's experience was evident in Rose's trial, particularly in the defence's construction of her subjugation. They argued that she had been the victim of domestic violence in support of this theme. In contrast the idea of Myra Hindley's subjugation was not clearly identified and exploited by her defence counsel.

The different use of gender in the two trials is also evident in relation to the victims. The child-victims in Myra Hindley's trial were not the subjects of gender construction by counsel, whereas gender played a significant role in Rose's trial in relation to the surviving victims. However, it is unlikely that the cause of this difference lies solely or even predominantly in the availability of gendered discourses. Notably the dead victims in Rose's case were not portrayed through the use of gendered discourse. In both cases the dead victims were left alone by counsel; for the prosecution it was enough that they were dead and had died in a horrific manner, and it would, therefore, have damaged the defence case to attack them. The only use of gender in relation to the victims is by Rose West's defence in relation to the surviving victims. They either denied their accounts suggesting the women were lying or deluded, drawing on ideas of female pathology, or

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<sup>9</sup> See Appendix 7.

<sup>10</sup> A Worrall *'Offending Women'* London, Routledge (1990) p21.

<sup>11</sup> The 1980s saw a spate of cases defended on the grounds of diminished responsibility, in which the specific grounds were PMS. For a discussion see H Allen 'At the Mercy of Her Hormones: pre-menstrual tension and the law' (1984) 9 m/f 19.

<sup>12</sup> Discussions of provocation by feminists has highlighted the 'male' nature of the defence, in particular its requirement of 'immediacy'. As a consequence of this feminist work, which has highlighted in particular its failure to account for the experiences of battered women who kill, these women are now more likely to have their experiences taken into account and successfully raise provocation as a defence. For a discussion see A McColgan *'General Defences'* in D Nicolson and L Bibbings *'Feminist Perspectives in Criminal Law'*, London, Butterworths (2000).

<sup>13</sup> D Nicolson 'Telling Tales: Gender discrimination, gender construction and battered women who kill' (1995) *FLS* Vol 3, No 2, 185.

<sup>14</sup> C Smart *'Feminist Approaches to Criminology or Postmodern Woman meets Atavistic Man'* in L Gelsthorpe and A Morris *'Feminist Perspectives in Criminology'* (1990).



used sexual promiscuity as a basis for blaming the victims for their victimisation. These are clearly identifiable and well-defined gender stereotypes

The difference in the approaches assumed in the two cases is perhaps most clearly evident in relation to masculinity. Notably, Myra Hindley was not portrayed as masculine by the prosecution. This was in spite of the evidence, the violent and pornographic material, found in her home. These objects and other masculine discourses were barely discussed during Myra Hindley's cross-examination. For example, the prosecution did not use militarisation in their attack on Myra Hindley. This illustrates their reluctance to engage in constructions of Myra Hindley as defeminised, despite the fact that her masculine construction would assist the portrayal of a woman capable of murder. Furthermore, although the prosecution generally sought to portray Myra Hindley as active, in some respects they conceded her passivity. This is perhaps explicable by the strength of gendered norms at the time, as evidenced by the reflection of gender stereotypes in the trial. The general assumption connecting femaleness with femininity may have meant that attributing masculine characteristics to a woman was beyond contemplation.

In contrast, in Rose's trial, the prosecution attacked her femininity by adopting masculine discourses. Patterns identified in the transcript indicate counsel's ability to depart from assumptions connecting femaleness and femininity. The construction of Rose West as masculine is the third theme in the prosecution narrative designed to make it possible for the jury to contemplate that a woman was involved in sexual serial murder. This final theme is perhaps the most crucial as a consequence of the association of men (masculinity) and sexual serial murder.<sup>15</sup> Thus, the prosecution's depiction of Rose painted her as 'like a man' in terms of her general personality characteristics:

'You assess her. Not without intelligence, tough and resourceful, perfectly prepared to make her point when she wanted.'<sup>16</sup>

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<sup>15</sup> Only men have been known to commit these crimes thus far, see Ch 1.

<sup>16</sup> Prosecution closing speech p8.



It also depicted her as masculine in terms of her aggressive sexuality, which culminates in the description of her raping Anne Marie with a strapped-on dildo.<sup>17</sup> An additional function of this construction of Rose West was to rebut the defence's proposition of her subordination. In this respect, Fred West's suicide, which could have proved disastrous for the prosecution's case, became one of their greatest assets. Because of his absence the prosecution was able to switch Rose and Fred West's gender roles. Through the descriptions of the abuse suffered by the surviving victims Rose West became the dominant party and Fred West was allotted a peripheral, often passive and feminine role.

Ironically, this construction of Rose West may have been in part facilitated by the retrospective construction of Myra Hindley as dominating Ian Brady.<sup>18</sup> This construction draws on the notion of the female being 'deadlier than the male.' Whilst this idea has been identifiable for many decades, this particular phrase coming from a poem written in 1911,<sup>19</sup> it was not exploited by the prosecution in Myra Hindley's case. However, this perception of the case, and female dominance and deviance more generally, has since developed.<sup>20</sup> The pervasiveness of this construction of female deviance, which may in part be attributed to the more recent interpretation of Myra Hindley's crimes, provided the prosecution in Rose West's trial with a narrative of a genre familiar to the jury.<sup>21</sup>

In contrast to Myra Hindley's trial, therefore, it is argued that distinct gendered themes were identified and emphasised in the cases constructed by the defence and prosecution in Rose's trial. They are passive / aggressive sexuality, caring / perverse maternity and masculine aggression / passivity. The root of the prosecution themes lies in the similar fact evidence given by the surviving victims. This evidence and the themes it embodies were the means they adopted to bridge the evidential gap.

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<sup>17</sup> Ch 5 footnote 135.

<sup>18</sup> Ch 1.

<sup>19</sup> R Kipling 'The Female of the Species' (1911).

<sup>20</sup> For example, see A Kirsta 'Deadlier Than The Male: violence and aggression in women' Harper Collins, London (1994).

<sup>21</sup> See Ch 3. 'Case Preparation: the construction of truth by barristers'.



### **The Summings Up**

The apparent differences in the cases are perhaps inevitably mirrored in the judges' summings up. In both cases the judges supported the prosecution. However, their support was evidenced, and indeed given, in different ways. The mode of support was determined by what was *necessary* for the judge to say in order to procure a guilty verdict.

In Myra Hindley's case the strong evidence determined that very little was required of the judge. The strength of the prosecution case was emphasised by the judge's lack of engagement with gender stereotypes. Whilst some of the prosecution portrayals were reproduced by the judge, they were not exploited and his support of the prosecution case did not depend on them. In contrast, the judge in Rose's case adopted as his framework the entire prosecution narrative and the representations of femininity it embodied. What is more, the concentrated form of the speech actually intensified the portrayals of femininity. Thus, in adopting so fully the prosecution version the judge minimised the defence's alternative construction of Rose. Furthermore, in accepting the prosecution case and version of events the judge implicitly rejected the defence version of events (that Fred West operated alone) and their claim that there was inadequate evidence linking Rose West to the murders.

Whilst the approach taken by the judge in Rose West's trial was not contrary to the law, the law permitting a breadth of discretion, it is incongruous with the idea of the judge as an impartial arbiter, as embodied in adversarial theory.<sup>22</sup>

### **Concluding Thoughts**

Whilst Myra Hindley's conviction was perhaps inevitable on the basis of the strong evidence produced by the prosecution, Rose's was not. Her conviction depended on the additional evidence allowed; the similar fact evidence. This evidence introduced the theme of aggressive sexuality into the prosecution case, consequently many of the other

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<sup>22</sup> A Sanders and R Young 'Criminal Justice' Butterworths (2000), p552



witnesses also testified about elements of Rose West's aggressive sexuality. However, it should be asked whether this evidence, for example, evidence that she wore short skirts and see-through blouses and evidence that she slept with various lodgers, should have been allowed at all, it having no relevance at all in terms of murder. The same types of doubts or questions should also be raised in relation to some of the similar fact evidence. Of particular interest is the judge's decision to allow the testimony of Kathryn Halliday who described a *consensual* relationship with Rose West. It is simply not possible that her description of their relationship bore a 'striking similarity'<sup>23</sup> to the sexual abuse and murder of victims by both Rose and Fred West. The judge's decision to allow this evidence is indicative of the possibly unusually generous nature of the decision. Whilst this evidence indicated that Rose West was sexually promiscuous and the other similar fact testimonies indicated that she was involved in sexual abuse, whether they provided evidence of murder is surely debatable.<sup>24</sup>

What is likely is that the evidence decimated Rose's character and credibility as a witness in the eyes of the jury, and, most importantly in terms of this work, her femininity. The picture that emerges from the prosecution's construction of events is akin to the popularist representation of events described in chapter one, as embodied in the quotation from the *Daily Mail*:

'She (Rose West) was the mistress, he the slave. He kidnapped for her, presented her with victims like a dog carrying a partridge to its masters feet ... without Rose it is unlikely that he would have been anything more than a would-be Casanova with Jekyll and Hyde tendencies.'<sup>25</sup>

This construction of events was facilitated by the adversarial nature of the criminal justice system. Counsel's brief is not to elicit the truth, but to prosecute or defend. In order to secure a conviction it was crucial that the prosecution ensured that the similar fact evidence was allowed and thus demolished Rose's character through the destruction of her femininity. Ultimately this culminated in the construction of her as masculine and thus unnatural. The version of events that resulted was endorsed by both the judge in his summing up and the jury when they reached their verdict.

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<sup>23</sup> The test for deciding on the admissibility of similar fact evidence: *DPP v Boardman* (1975) AC 421.

<sup>24</sup> See 'Further Research Opportunities', below.



This portrayal of Rose West, argues Cameron, has been eagerly awaited by those who point to the dangers of female emancipation and seek justification to halt it in its path.<sup>26</sup> Myra Hindley, because she could be regarded as lone aberration, could not be used in support of this argument.<sup>27</sup> The perception of her as worse than Ian Brady and even as having been the dominant party has however grown up in popular mythology in spite of the tame way in which she was portrayed in her trial. This has provided a basis upon which she and Rose West can be regarded as a dangerous category of emancipated woman. But it is ironic that the means through which this, and the construction of Rose West during her trial, has been achieved is, perhaps in part, through the identification of effective categories of gender stereotyping by feminist scholars, legal and otherwise.

The initial perception of Myra Hindley as Ian Brady's aide and as less culpable during her trial should not be forgotten, and the special circumstances<sup>28</sup> that led to the particular construction of Rose West's culpability should not be ignored. Whilst the truth is elusive and will never be known, it is only further obscured by recourse to versions of events and explanations for criminality grounded in patriarchal constructions of femininity. These constructions divide women into those who behave appropriately (passively) and inappropriately (aggressively) and consequently lead to the polarisation of accounts of the two women's crimes into the 'dupe' and 'female dominance' explanations.<sup>29</sup> The prevalence of 'female dominance' model means that Fred West and Ian Brady have been effectively 'let off the hook' because of the comfort to be had in using these cases to punish, not only deeds done, but women who have failed as women and who have thus challenged society's very perception of what it means to be female. It is imperative therefore that *both* these representations of the women's actions be dismantled to create space for new ways of talking about their crimes. This thesis has begun that process in relation to the portrayals used in the courtroom.

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<sup>25</sup> Colin Wilson writing in *Daily Mail* 23<sup>rd</sup> Nov (1995) p37, also referred to in Ch 1.

<sup>26</sup> D Cameron 'Wanted: the female serial killer' *Trouble and Strife*, 33, Summer 1996, 21

<sup>27</sup> Ibid p23

<sup>28</sup> Fred's suicide and the judge's decision to allow the similar fact evidence.

<sup>29</sup> See Ch 1.



### **Further Research Opportunities**

During the course of this research a number of issues have been raised that could not be adequately dealt with within the thesis. These issues provide the basis for future, further research on the trials.

Whilst the two trials studied in this thesis are extreme and lone examples, it is possible that they reflect a wider trend. Further comparative research of a similar nature is required to determine whether there has been an *intensification* of the use of constructs of femininity more generally against women in the courtroom.

It is clear from the analysis of Rose West's trial that the similar fact evidence played a crucial role in her conviction. This thesis has examined how the similar fact evidence was used. It was not within the remit of the present study, however, to analyse the decision to allow the similar fact evidence from a doctrinal perspective. It has been suggested above that in some respects the judge's decision was dubious, indeed, the prosecution's request to allow the evidence was hotly contested by the defence. An analysis of the judge's decision would provide an interesting further insight into the grounds for Rose West's conviction.

Finally, whilst there has been some analysis of the cultural and media responses to the trials, work examining the way these representations worked in conjunction with the trials, for example, how the discourses evident in the trials may have been developed or omitted, would enhance our understanding of how trials feature in creating a historical record of events, and how portrayals of femininity feature in that process.



## **Appendices**

### **Appendix 1**

#### **Dramatis Personae**

##### **The Trial of Myra Hindley**

Mr Benfield              Police Officer.

Lesley Ann Downey    Victim.

Edward Evans           Victim.

Pat Hodges             12 year old next door neighbour, befriended by Ian and Myra.

John Kilbride           Victim.

Maureen Smith         Sister of Myra Hindley.

David Smith            Husband of Maureen Smith.

#### **Also Mentioned**

‘Myra’s grandmother’.

‘Myra’s mother’.

‘Myra’s Uncle’.



## **The Trial of Rose West**

Miss A	Surviving victim.
Liz Agius	Neighbour to Fred and Rose West at Midland Road. It emerged during her cross examination by the defence that Liz Agius had consensually slept with Fred.
Elizabeth Brewers	Lodger at Cromwell St, developed a friendship with Shirley Robinson (victim).
Nicola Blythe	Friend of the West's daughter, gave evidence regarding the period of Heather's disappearance.
Judith Bachelor	Lodged with Rose and Fred at their Midland Road flat and supplied the prosecution with photographs of the family.
Gillian Britt	Friend of one of the lodgers at Cromwell St. gave evidence regarding the disappearance of Shirley Robinson.
Alison Chambers	Victim.
Colin Cooper	Father of Carol Cooper (victim).
Anne Marie Davis	Daughter of Fred West, surviving victim.
Chrisopher Davis	Husband of Anne Marie Davis.
Arthur Dobbs	Saw Rose as 'client' and later became a sexual partner.
Terence Davis	Lodger at Cromwell St.



Mrs Margarita Dix	A neighbour to Rose and Fred when they lived at Cromwell St, gave evidence regarding the period of Heathers disappearance.
David Evans	Lodger at Cromwell St.
Mrs June Gough	Mother of Lynda Gough (victim).
Lynda Gough	Victim.
Shirley Giles	Neighbour to Fred and Rose at Midland Rd, mother of Tracy Hammond, gave evidence regarding Charmaine's disappearance.
David Gardner	Friend of the West's and various lodgers'.
Tracy Hammond	Neighbour to Fred and Rose at Midland Rd, daughter of Shirley Giles, gave evidence regarding Charmaine's disappearance.
Kathryn Halliday	Surviving victim.
John Hubbard	Father of Shirley Hubbard's (victim).
Shirley Hubbard	Victim.
Charles Jones	Lodger at Cromwell St.
Janet Leech	'Appropriate adult' during Fred West's police interviews, maintained correspondence during his imprisonment.
Daisy Letts	Mother of Rose West.
Mr Leveson	Counsel for the prosecution.
Anne McFall	Nanny to Fred and Rena West. He killed her whilst she was pregnant with his child.



Juanitta Mott	Victim.
Caroline Owens	Surviving victim.
Lucy Partington	Victim.
Bernard Poulson	Shirley Hubbard's (victim) step-father
Shirly Robinson	Victim.
Ben Stanniland	Lodger at Cromwell Street.
Therese Siegenthaler	Victim.
Lynda Tonks	A friend of the West's son Stephen, gave evidence regarding the time of Heather's disappearance.
Gavin Thomas	Police Officer, gave evidence regarding the search of Cromwell St and the interviews of Rose and Fred.
Charmaine West	Daughter of Fred West, victim.
Fred West	Rose West's husband.
Heather West	Daughter of Fred and Rose West, victim.
Rena West	First wife of Fred. He killed her prior to meeting Rose.
Miss X	Surviving victim.



**List of Rose’s Children and Birth Dates**

Heather (1970)

May (1972)

Stephen (1973)

Tara (1977)

Louise (1978)

Barry (1980)

Rosemary (1982)

Lucy Anna (1983)



**Appendix 2**

**The Trial of Myra Hindley: table illustrating the percentage of time spent discussing feelings during testimony**

<b>Witness</b>	<b>Barrister</b>	<b>Percentage</b>
Ian Brady	Ian's counsel	0.48%
	Myra's counsel	3.63%
	Prosecution counsel	1.16%
Myra Hindley	Myra's counsel	1.62%
	Prosecution counsel	1.59%

**Appendix 3**

**The Trial of Myra Hindley: table illustrating percentage of time spent discussing emotions during testimony**

<b>Witness</b>	<b>Barrister</b>	<b>Theme</b>	<b>Percentage</b>
Ian Brady	Ian's counsel	Myra's feelings	0.37%
		David's feelings	0.10%
	Myra's counsel	Myra's feelings	1.21%
		Myra's feeling for Ian	1.81%
		Feelings re David	0.6%
	Prosecution counsel	Sick enjoyment	0.14%
		Shame (LAD)	0.14%
		David	0.7%
		Myra	0.02%
Myra Hindley	Myra's counsel	Shame	0.1%
		Fear and worry	1.19%
		Feelings for Ian	0.32%
	Prosecution counsel	Shame	0.43%
		Fear and anxiety	0.99%
		Feelings for the dog	0.15%



**Appendix 4**

**The Trial of Myra Hindley: table illustrating percentage of time spent discussing relationships during testimony**

<b>Witness</b>	<b>Barrister</b>	<b>Percentage</b>
Maureen Smith	Prosecution counsel	18.53%
	Ian's counsel	0%
	Myra's counsel	0%
David Smith	Prosecution counsel	3.95%
	Ian's counsel	1.18%
	Myra's counsel	1.62%
Ian Brady	Ian's counsel	1.95%
	Myra's counsel	3.21%
	Prosecution counsel	0.56% +
Myra Hindley	Myra's counsel	5.73%
	Ian's counsel	0%
	Prosecution counsel	1.56%

- + 0.41% referring to relationships with family and friends  
0.14% referring to a relationship with Edward Evans

**Appendix 5**

**The Trial of Myra Hindley: table illustrating percentage of time spent discussing the Smiths' baby during testimony**

<b>Witness</b>	<b>Barrister</b>	<b>Percentage</b>
Maureen Smith	Prosecution counsel	1.78%
	Ian's counsel	3.63%
	Myra's counsel	10.90%
David Smith	Prosecution counsel	0.06%
	Ian's counsel	1.05%
	Myra's counsel	0%

**Appendix 6**

**The Trial of Myra Hindley: table illustrating the number of times the Smiths' baby is mentioned**

<b>Barrister</b>	<b>Maureen</b>	<b>David</b>
Prosecution counsel	5	2
Ian's counsel	4	7
Myra's counsel	21	3



## Appendix 7

### Methodology

‘Texts are not inert extra-temporal blobs of meaning’,<sup>1</sup> they provide insights into dominant societal norms. Legal texts, however, play a role in not only reflecting societal norms, but creating them. This is because legal texts are used again and again, and because legal discourse is perceived to speak ‘the truth’.<sup>2</sup> As discussed in chapter two, law and thus legal texts embody norms of femininity and masculinity. Whilst Foucault identified the need to deconstruct the subject as embodied in discourse, he assumed a male subjectivity and ignored its gendered nature. Thus, it is argued that foucauldian work that ignores the gendered nature of the subject necessarily perpetuates existing gendered norms.<sup>3</sup> Feminists have demanded that norms of femininity embodied in legal texts be identified and challenged.

The method adopted in the present study is designed to identify the subjectivities created in the trials of Rose West and Myra Hindley. The work seeks to look behind the dialogue of the courtroom and identify what forms of knowledge and concepts underlie them,<sup>4</sup> but also, how that knowledge and those concepts are employed to give meaning to the stories told in the courtroom.

### Method

The transcripts of the two trials were obtained. A full transcript of Myra Hindley’s trial was not available, however a number of crucial defence and prosecution testimonies were obtained. From the available transcript initial investigation led to the conclusion that only four testimonies and the judge’s summing up were useful for the purposes of

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<sup>1</sup> D Smith ‘*Texts, Facts and Femininity: Exploring the relations of the ruling*’ London, Routledge (1990) p3

<sup>2</sup> S Duncan ‘*Law as Literature: Deconstructing the legal text*’ Law and Critique Vol V, No 1, (1994), 3

<sup>3</sup> *Ibid* p6-9

<sup>4</sup> M Foucault ‘*The Archaeology of Knowledge*’ Translated from French by A Sheridan Smith, London Tavistock (1972) Ch 5



this thesis. These testimonies were those of Maureen and David Smith, for the prosecution and Ian Brady and Myra Hindley, for the defence. In contrast, the transcript of Rose West's trial embodied dialogue relevant for the purposes of this thesis in most testimonies.

### **Thematic Analysis**

The main method adopted in the examination of the texts was a thematic analysis, this was developed by adapting a number of suggested methodologies for content analysis.<sup>5</sup> The first stage of the process was to identify relevant themes. These themes came from two sources; those themes that had been previously identified in the literature review; and those that were evident from an examination of the transcripts. Both sets of themes corresponded, the findings of previous feminist work being borne out in the transcripts. The themes were clearly defined and then allotted code numbers and the relevant numbers marked on the texts. The data (the portions of text) relating to each theme were then collected together on thematic data sheets. The portions of text, now thematically organised, were then available for analysis.

Once this data was collected it was analysed. For example, lexical analysis was used. This type of analysis examines the form of language used, for example, the use of stereotypes, terminology and attributes (for example, using description) in the dialogue. In addition, data was examined to ascertain the amount of time/attention given to any one theme, particularly how that attention was directed (positively or negatively), the use of symbols or symbolic objects or places within the themes, the use of strong/gendered language, and finally how character was constructed through the various themes.

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<sup>5</sup> O Holsti 'Content analysis for the Social Sciences' London, Addison-Wesley Publishing Co (1969), E Babbie 'The Practise of Social Research' London, Wadsworth (1995) Ch 12, R Weber 'Basic Content



**Structural Analysis**

Again work on methods of content analysis was used to develop a method of data collection suitable for the present work.<sup>6</sup> Suitable data collection sheets were then designed:

Name of witness	Topic of testimony/questioning	Page(s)

The contents of the transcripts were then mapped on the data collection sheets so that structural patterns could be identified. In the analysis of structure particular attention was paid to how the events were specifically ordered (and the pattern of events / narrative that evolved as a consequence), the attention awarded to different witnesses, and evidence of hierarchical ordering of witnesses.

**Analysis of Nomenclature**

In addition to the identification and collection data relating to the themes and structure, an analysis of naming patterns was conducted. Data collection sheets were developed for each of the main players:

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*Analysis*' Sage, London (1990), K Krippendorff '*Content Analysis: A introduction to its methodology*' Sage, London (1980)

<sup>6</sup> Ibid



Cross-examination of Anne Marie: naming of Rose West					
Mrs West	Rosemary West	Rose West	Rosemary	Rose	Other

The names were then collected from the transcripts. This collection was, however, done in conjunction with the data collected on the structure of the trials, so that major shifts in questioning and topic were also marked on the sheets to reveal how different topics might give rise to different appellations.

The method of interpretation of naming patterns drew on the findings of previous work that had identified naming patterns, particularly the attribution of credibility through the formality of naming:<sup>7</sup>

Naming Type	Degree of Formality	Associated Credibility
Honorifics	extreme politeness, deference	Most credible
Mr/Mrs	formal	
First name plus surname	less formal, more distant	
First name alone	intimate/proximate	
Nicknames and familiar names eg 'mate'	Least formal/most proximate	Least credible

<sup>7</sup> P Brown and S Levinson *'Politeness: Some universals in language usage'* Studies in Interactional Linguistics 4. Cambridge, Cambridge University Press (1987), A Zwickey *'Hey, what's your name?'* 10 Chicago Linguisticss Soc (1974), 287-301 at 296, Paul Robertshaw *'Summary Justice: Judges Address Juries'* Cassel, London Washington (1998), Ch 3



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